The Solicitors' Journal and Weekly Reporter.

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page ix.

VOL. LXXI. Saturday, June 4, 1927. No. 23

Current Topics.

Small Bills and Cheques.

THE MIDLAND BANK'S ingenious scheme for the payment of bills under £2 over the counter to the order of their customers having current accounts has received considerable publicity. Briefly, the bank will issue books of receipts in the ordinary form, with a note "at the debit of my account" to be signed by the customer. When so signed, and presented, the money is to be exchanged for the receipt. The main advantage no doubt is that the revenue stamp of twopence on a cheque for any amount is saved by this device. Then, too, receipts in a uniform series may be more easily handled and filed. On the other hand, it would seem that the original bill would still have to be kept for reference if there was a possibility of any dispute about items. It is understood that the Revenue authorities have raised no objection. A cheque is defined in s. 73 of the Bills of Exchange Act, 1882, by reference to s. 3 (1), and is an unconditional order in writing to a banker to pay on demand. As such it is taxed a penny under the Stamp Act, 1891 (since increased to twopence). The receipt is not in form an unconditional order in writing for payment, and for this reason it may be held not to be a cheque. It is at least, however, when signed by the customer, an implied authority to pay. Presumably it is not to be regarded as an assignment of so much of the balance, or it would require a larger stamp. Presumably also if the bank, having sufficient money to the customer's credit, refuses by mistake or otherwise, to "honour" the receipt, the customer would have no remedy in respect of the damage to his credit, for, in the absence of a request to pay, the line of cases such as *Marzetti* v. *Williams*, 1830, 1 B. & Ad. 415, would have no application. The form in fact does not appear to be a negotiable instrument at all within the Bills of Exchange Act. Yet it is not made payable to order, and can only be paid or payable to bearer. Perhaps a nice question might arise if the form, having been filled in and signed by the customer, and delivered to the creditor, was stolen from the latter, presented, and honoured. If the customer would have to bear the loss as between him and the bank, could it be otherwise than on the footing that he had requested the bank to pay? It also would appear that, if the receipt bore a twopenny stamp, it might be filled in for any amount, and thus perhaps seriously encroach on the cheque revenue. The scheme as launched at present, however, is on the more modest scale.

Change of Name.

IN THE old days, meaning thereby, those before the war. the attitude of our law to the question of names, other than trade names, was that of complete indifference. In this matter it left every man to the freedom of his own will, and so, when an East Anglian publican, with the not very euphonious name of "BUGG," was minded to abandon it and assume instead the extremely aristocratic "NORFOLK-HOWARD," it merely smiled indulgently but took no further notice. The laws of most other countries allowed no such liberties, and on the outbreak of the great war we, too, had to reconsider the propriety of permitting anyone to alter his name at his own will, more especially if it was suggestive of a foreign nationality. By the Registration of Business Names Act, 1916, and the Aliens Restriction (Amendment) Act, 1919, the previous unfettered liberty in the choice of names was severely restricted, By s. 7 of the last-mentioned Act "an alien shall not for any purpose assume or use or purport to assume or use or continue after the commencement of this Act the assumption or use of any name other than that by which he was ordinarily known on August 4th, 1914." In *Evans* v. *Piauneau*, 1927, W.N. 154, the Divisional Court had to consider whether the addition of the words "& Co." to an alien's name constituted a change of name within s. 7, and the judges had little difficulty in coming to the conclusion that it did, and that a breach of the section had been committed. There is a curious belief on the part of many people that to add "& Co." after their names adds, in some way, to the dignity of their business. "JOHN SMITH," as a business name, appears to them quite commonplace, whereas "JOHN SMITH & Co." sounds quite imposing. At one time too, the still more singular misconception prevailed that to add the word "Limited" was still more impressive, and we believe that occasionally this entirely unwarranted addition was made solely for the purpose of effect. Now the improper use of the word "Limited" is expressly prohibited by s. 282 of the Companies (Consolidation) Act, 1908.

Declaration of Legitimation in Divorce Proceedings.

WHAT APPEARS to be the first reported case in which the Legitimacy Act, 1926, has been considered, raised an extremely important point of practice.

The case in question is *Bednall* v. *Bednall and Shivussawa*, 71 SOL. J., p. 453, and the point raised was whether in

proceedings for divorce the petitioner or other party could ask the court to make a declaration that a child born to the parties before the marriage, which the court was being asked to dissolve, was legitimated, and, on making the declaration, make an order as to the custody of the legitimated child.

In the above case the petitioner brought a petition for divorce, and claimed, *inter alia*, a declaration that a child born to him and his wife before the marriage was legitimated, and further claimed the custody of the child.

Now, s. 2 (1) of the Legitimacy Act provides that a person claiming that *he* or *his parent* or *any remoter ancestor* has become a legitimated person, *may* present a petition under the Legitimacy Declaration Act 1858. That procedure therefore is clearly not intended to be the *only* way of establishing legitimation under the Act of 1926, and this is further borne out by cl. 1, proviso (*b*), of the schedule to the Legitimacy Act, 1926, which is to the effect that the registrar must not authorise re-registration of the birth of a legitimated person unless, *inter alia*, "the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction."

It is submitted that if a person is legitimated, his status as a legitimated person is in no way affected by the fact that his legitimation has not been the subject of any judicial pronouncement. Where, however, it is sought to exercise any rights, flowing from such legitimation—rights to property for example, or rights to custody of the legitimated person—proof thereof must be given, and the only way in which such proof can be given is by showing that there has been some judicial pronouncement by a competent court.

It is submitted that a judge trying matrimonial causes (e.g., divorce, judicial separation) has the power to make the necessary declaration, and although in *Bednall* v. *Bednall* Mr. Justice HILL held that he had no such power, it is submitted that that decision is not to be read as meaning that in a petition for divorce or judicial separation the judge has no power whatever to make a declaration of legitimation.

Mr. Justice HILL appears to have based his judgment on the fact that the child whose legitimation he was being asked to declare was not before the court. "Unless the child is a party, I do not think," said HILL, J., "that this court is a 'court of competent jurisdiction.'"

It follows that the court would have had jurisdiction if the child had been a party to the proceedings. The present machinery of the Divorce Division makes it somewhat difficult to make such a child a party to the proceedings, but Rules of Court might with advantage be framed to surmount any such difficulty.

Proceedings against Foreigners.

LAST WEEK the Lord Chancellor received an influential deputation representing the London, Liverpool and Manchester Chambers of Commerce, who advocated an alteration in the law which would enable the plaintiff in an action in England against a foreign defendant to arrest the latter's property situated in England as security pending judgment. As matters stand at present, there is nothing to prevent a defendant, British or foreign, at any time before execution, from withdrawing his property from the jurisdiction and thus defeating his creditors. Without attempting at present to discuss the questions of policy raised in the proposed change, we would suggest that in the event of such an alteration of the law being made an arrestment might be accompanied by an undertaking as to damages, as in the case of an interim injunction. Otherwise a defendant who ultimately succeeds will have been seriously prejudiced by the immobilisation of his property.

The proposal is not entirely novel in Great Britain and brings to mind several similar proceedings. Scots law has for a long time had, and still has, a similar remedy in the arrestment *jurisdictionis fundandæ causa*, that is, the "attachment in Scotland of the goods of A in the hands of B" for the purpose of founding jurisdiction against A. To quote from a footnote in "Erskine's Principles of the Law of Scotland": "In the earliest case in Scotland the allegation was that a Frenchman having movables here was in the course of withdrawing them in order to prejudice a claim against him arising out of a testament, and concluding to have these effects arrested till he should find caution *judicio sisti* and *judicatum solui*. The court decided in the affirmative: *Young* v. *Arnold*, 1683, M. 4833." Again, until not so very long ago, there existed in the Mayor's Court of the City of London the procedure known as a *Foreign Attachment*, whereby the property in the City of London of a defendant resident abroad could be attached as security pending judgment. (A similar procedure existed in certain other local courts.) An instance of this procedure will be found in *De Haber* v. *Queen of Portugal*, 1851, 17 Q.B. 171; 25 L.J. Q.B. 488. Moreover, it is not so very long ago that certain of the courts of common law could, at the beginning of an action, issue the writ *capias ad respondendum*, under which the body of the defendant was seized until he gave security for a judgment which might or might not issue against him, and in Admiralty the arrest of the ship until bail is given is still a normal part of the institution of an action *in rem*. It is curious that it should be possible to obtain the writ *ne exeat regno* against a defendant upon the allegation that he is an essential witness in an action launched against him, and yet there is no corresponding writ to prohibit the removal from the jurisdiction of property which may be essential to the satisfaction of a judgment against him.

A Criticism of the Slip attached to Income Tax Form, No. 11.

THERE APPEARS to be one comment which might legitimately be made in respect of the slip, annexed to the Income Tax Form, No. 11, which purports to explain the nature of the change of assessment under Sched. D. That slip explains very clearly the relief that may be claimed in cases to which s. 29 (3) of the Finance Act, 1926, applies. The relief in question consists in the assessment of the taxpayer, who would otherwise have been assessable on the profits during the year preceding the year of assessment, on the previous system of the three years' average, but, in order to claim this relief, it is essential for the taxpayer to show that the actual profits as computed for income tax purposes, for either the year 1924-25 or 1925-26, are less than the average for the six years prior to 1924-25, or, where the taxpayer was not in possession of the source of the profits or gains or income during the whole of those six years, for such lesser period during which he was in such possession. Where a taxpayer claims this relief he will be assessed on the three years' average system, not only for the income tax year 1927-28, but also for the income tax year 1928-29. Further, this relief will not be granted unless notice in writing of the election to be charged in this manner is given to the Inspector of Taxes not later than the 5th day of October, 1927.

So far, so good. The slip, however, omits to state and makes no reference to the important relief given by proviso (*a*) to s. 29 (1) of the Finance Act, 1926. According to that provision, where the trade, profession, etc., has been set up or commenced within the year preceding the year of assessment, the taxpayer may elect to be charged to income tax on the amount of the profits or gains of the year of assessment. But this relief cannot be claimed unless notice in writing is given to the surveyor within twelve months after the year of assessment.

One would have thought that attention might have been drawn in the slip to this important relief, notwithstanding that the income tax authorities stand to profit by not drawing attention to it.

The Trade Disputes and Trade Unions Bill.

By E. P. HEWITT, K.C., LL.D.

(*Continued from p.* 418.)

VI.

After two days' discussion in the House of Commons in the latter part of last week, cl. 4 of the Bill was carried, with no very material alteration, except the addition of one new sub-clause, as shown below. Sub-cl. (2), which provides for the separation of the political fund from the general funds of the trade union, is amended by inserting the words, "and no assets of a trade union other than those forming part of the political fund shall be," before the words, "directly or indirectly applied."

The new sub-clause which has been added is in the following terms :—

> "(4) Notwithstanding anything in this Act, until the thirty-first day of December, 1927, *it shall be lawful to require* any member of a trade union to contribute to the political fund of a trade union as if this Act had not passed."

This clause is no doubt qualified by the words "as if this Act had not passed"; but it suggests the idea that under the Act of 1913 a trade union is entitled to "require" its members (other than those who have obtained exemption) to contribute to the political fund as it may think fit. The Act of 1913 does not in terms authorise requisitions to be made for contributions to the political fund. Presumably, under the new sub-clause, it would be lawful for the executive of a trade union—if its rules do not provide to the contrary—to make a levy, even after the Bill has been passed, upon all who have not given notice of objection in the manner provided by the Act of 1913, for the purpose of raising funds to contest the next general election. Further, it is not clear from the terms of the clause whether a requisition for payment of a contribution, even if made on the 31st December, 1927, would not be good, although payment (if made at all) would necessarily be made after that date.

Independently of this sub-clause, however, in considering the general effect of the amendment made by cl. 4 of the Bill upon the provisions of the Act of 1913, it is important to observe that the alteration is not confined to the substitution of "contracting in" for "contracting out," in relation to the political levy; the whole structure of the enactment contained in the Act of 1913 has been altered. There is no affirmative provision in the Act of 1913 for the severance of the political fund from the other funds of a trade union, or for payments in furtherance of the political objects being only made out of the political fund, or for members who give notice of objection to contribute being exempt from liability to contribute. What the Act of 1913 does is to provide that *rules shall be in force* providing for these matters; and by cl. 3 (2) if any member of a trade union alleges that he is aggrieved by a breach of any rule made under the section, he may complain to the Registrar, and an order of the Registrar is to be conclusive and not removable into any court or restrainable by injunction. The directions contained in cl. 4 of the Bill are affirmative and mandatory, and are quite independent of any rules which a trade union may purport to make. Under sub-cl. (1) "*It shall not be lawful* to require any member of a trade union to make any contribution to the political fund of a trade union, unless," &c.; and by sub-cl. (2) "All contributions to the political fund of a trade union . . . *shall* be levied and made separately from any contributions to the other funds of the trade union," etc.

The method of enactment adopted by cl. 4 of the Bill would appear to have great advantages over that adopted in the Act of 1913. One result of the alteration would seem to be that in the event of a breach of any of its provisions, a member of the trade union would be entitled (it is thought) to obtain relief in the courts, and would not be obliged (as under the Act of 1913) to bring his complaint before the Registrar and to abide by the Registrar's decision.

Clause 5 of the Bill, which relates to organisations among civil servants, passed through committee on Monday, with certain small amendments designed to make its meaning clearer. The chief alterations were made in proviso (*a*) to sub-cl. (1), the words "not composed wholly or mainly of persons employed by or under the Crown," being inserted after the word "organisation"; and, after the word "thereof" in the same clause, the words "he is or may become entitled to any" have been struck out, and in their stead the following words have been inserted: "there had on the fourth day of April, 1927, accrued or begun to accrue to him a right to any future," etc.

Upon this clause, it may with great respect be observed that sub-cl. (1), in the portion preceding the proviso, does not seem very lucid. The word "organisation" is used no less than seven times, and in some lines it is difficult to decide which of the different kinds of organisations mentioned, is referred to.

Clause 6 of the Bill—the object of which is to secure equal treatment for trade unionists and non-trade unionists, as regards their employment by local or other public authorities—was passed through committee on Tuesday. An amendment was made, at the instance of the Government, to cover the case of indirect employment by a public body, i.e., where terms concerning the persons to be employed are imposed on a contractor before a tender is accepted. The amendment consisted of omitting the final words of sub-cl. (2), "and any condition imposed in contravention of this section shall be void," and inserting instead a new clause as follows :—

> "It shall not be lawful for any local or other public authority to make it a condition of any contract made or proposed to be made, with the authority, or of the consideration or acceptance of any tender in connection with such a contract that any person to be employed by any party to the contract shall or shall not be a member of a trade union."

Clause 7, which, apart from the definition clause, is the last clause of the Bill as printed, is one of considerable practical value. It is as follows :—

> "Without prejudice to the right of any person having a sufficient interest in the relief sought to sue or apply for an injunction to restrain any application of the funds of a trade union in contravention of the provisions of this Act, such an injunction may be granted at the suit or upon the application of the Attorney-General."

There is a further clause applying cl. 7, with the appropriate alterations, to Scotland. The power conferred by this clause upon the chief law officer of the Crown is, no doubt, only intended to be employed in very exceptional cases, but it may be useful as a deterrent. It is obvious that an ordinary member of a trade union may not care (or have the means) to incur the serious responsibility and risk of challenging before the courts the action of his own trade union. The main object of the clause would seem to be that in the rare cases in which a strike or lock-out may occur, of a nature declared by the Bill to be illegal, the Attorney-General may be able to take steps to prevent the application of funds in furtherance of the same. For such intervention to be successful promptness is essential, and prompt relief can best be obtained by an application for an injunction. Clause 7, probably unamended, will have passed through Committee before this article appears in print; but the concluding section will not be taken until after Whitsuntide.

Clause 8, which—as it stands at present—is the final section of the Bill—contains a definition, for the purposes of the Bill, of the word "strike." To define this term has not, it seems, been attempted in any of the previous statutes.

"8.—(2) In this Act the expression 'strike' means the cessation of work by a body of persons employed acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been employed, to continue to work or to accept employment."

Having regard to the alterations which have been made in cl. 1, it is presumed that the far more difficult task of defining a "lock-out," for the purposes of the Act, will also be attempted.

(*Concluded.*)

Private Street Works.

By ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from p.* 418.)

Among the cases in which this decision has been followed, reference may be made to *St. Giles, Camberwell* v. *The Crystal Palace Company*, 1892, 2 Q.B. 33. It was there laid down that an ancient country highway which became a new street, in the ordinary and popular sense of the term, by the erection of buildings fronting it, was within the terms of the Act so that the expense of paving it might be charged upon the owners. The result is somewhat curious. Under s. 96 of the Act of 1855, Vestries and District Boards in the Metropolis (now represented by the Borough Councils) are made surveyors of highways for their districts, and the section provides that all streets being highways shall vest in and be under the management and control of the Vestries or District Boards (now the Borough Councils). The result of these enactments taken by themselves would appear to be that the borough councils are bound to repair all highways, and yet it would appear from the cases already cited that though they were bound to repair they might, by neglecting their duty to repair, render it necessary for the street to be reconstructed at the expense of the frontagers if, in the meantime, the street had become an ordinary street by the erection of houses in it. In illustration of what has been said, reference may be made to *Allen* v. *The Vestry of Fulham*, 1899, 1 Q.B. 681. There, a road, now known as Wandsworth Bridge Road, was made through agricultural land in the year 1873. It was made under the authority of an Act ofParliament which provided in terms that when the road was completed it should be a public highway of the parish, repairable in like manner as any other highway of the parish should from time to time be repairable. The road was accordingly taken over and the carriage-way kept in repair by the local authority. No houses were built adjoining the road until 1890, when houses were erected on one side. In 1896 houses were erected on the other side of the road, and the local authority declared the road to be a new street and directed that it should be paved at the expense of the frontagers. It was held that the magistrate was justified in finding that it became a new street for the first time after the erection of the houses therein.

Section 105 of the Act of 1855 provides, that in case the owners of the houses forming the greater part of any new street laid out or made or hereafter laid out or made which is not paved to the satisfaction of the Vestry or District Board (now the Council of the borough in which such street is situate) be desirous of having the same paved, or if such Council deem it necessary or expedient that the same should be so paved, then and in either of such cases such council shall well and sufficiently pave the same, either through the whole breadth of the carriage-way and footpaths thereof, or any part of such breadth, and from time to time keep such pavement in good and sufficient repair. The only observation to be made upon the section so far is that it relates to paving, and the Act of 1862 defines the word "pave" as applying to and including the formation of the roadway or footway of any street.

The section makes no mention of sewering, or even draining, and in *Wandsworth Borough Council* v. *Golds*, 74 J.P. 464, the court intimated, if they did not expressly so decide, that while the expression "paving" might be taken to include channelling, it did not include such things as gullies. And it will be noticed that the section does not, like the Public Health Act, refer to means of lighting.

Section 105 of the Act of 1855 goes on to provide that the owners of the houses fronting such street shall on demand pay to the Council the amount of the estimated expenses of providing and laying such paving, such amount to be determined by the surveyor for the time being of the council. It will be observed that under this section the liability is upon the owners of the houses forming the street, but the Amending Act of 1862, s. 77, provides that the owners of the land bounding or abutting on such street shall be liable to contribute to the expenses or estimated expenses of paving the same as well as the owners of the houses therein, with a proviso to the effect that it shall be lawful for the council to charge the owners of land in less proportion than the owners of house property should they deem it just and expedient so to do. The procedure for the recovery of the expenses is as follows: The surveyor makes an apportionment of the estimated expenses of paving, and the owners may be required to pay such estimated expenses before the work is commenced or during its progress. When the work is completed, if the estimated expenses exceed the actual expenses of paving, then the difference between such estimated expenses and the actual expenses is to be repaid by the council to the owners of the houses or land by whom the said sum of money has been paid. And in case the estimated expenses be less than the actual expenses of paving, then the owners are to pay on demand such further sum of money as, together with the sum already paid, amounts to such actual expenses.

It may be convenient at this point to state that neither of the sections to which reference has been made indicates any principle upon which the expenses are to be apportioned among the owners liable, and it was held by the Court of Appeal in the *Metropolitan District Railway* v. *Fulham Vestry*, 1895, 2 Q.B. 443, that the council is not bound to charge the owners of land abutting on a street rateably *inter se* according to frontage or otherwise, and that the apportionment cannot, in the absence of *mala fides*, be questioned. It is obvious that this interpretation of the Act might be productive of considerable hardship. Nevertheless, it appears that in the absence of anything in the nature of fraud or bad faith the law is clearly stated in the case under consideration.

It must not be inferred, however, that a borough council can charge the owners in an arbitrary way. It has been held that upon the hearing of a summons against an owner to enforce payment of his apportioned share of such expenses, evidence may be given by him to show that the amount alleged to have been expended has not actually been expended or that it includes expenses other than paving expenses: see *Reg.* v. *Marsham*, 1892, 1 Q.B. 371. In the course of his judgment, Lord Halsbury said: "In the original Act the estimate of expenses is made conclusive, but where the Board is endeavouring to recover in respect of actual expenses incurred it is only right that they should prove that they were actual expenses."

Section 77 of the Act of 1862 provides that it shall be lawful for the council at their discretion to accept payment of the amount apportioned or charged in respect of each house or premises by instalments spread over a period not exceeding twenty years, and any such amount shall be recoverable from the person or any future owner of the premises either by action at law or in a summary manner before a justice of the peace at the option of the council. Although this provision makes a future owner liable for any sum outstanding for paving expenses, it does not create a charge on the premises such as arises outside the metropolis

under the Public Health Act and the Private Street Works Act. The point is of importance in this way: If the owner who is liable for the expenses sells the property while the expenses are unpaid and conveys as beneficial owner, and the purchaser is compelled to pay such expenses, the purchaser cannot recover the amount so paid from the vendor under the implied covenant against incumbrances contained in the conveyance. It had previously been held otherwise in a case arising under the Public Health Act, 1875, which makes the expenses a charge on the premises. The decision referred to is *Egg* v. *Blayney*, 21 Q.B.D. 107, and the result is concisely stated in the judgment of WILLS, J., who said: "It is clear that there is no charge upon the land in the present case, but only successive personal liabilities imposed upon the successive owners, and therefore there is no liability under the implied covenant."

The amending Act of 1862 enables the council to recover as part of the expenses the cost of paving at the points of intersection of streets and all other incidental costs and charges. It was held in one case that the costs of serving notices of apportionment, obtaining names of owners, etc., though third persons were employed for that purpose, might be recovered as expenses incidental to the cost of paving: see *Poplar District Board* v. *Love*, 38 J.P. 246. But having regard to the decision in a later case, *Ballard* v. *The Mayor, &c., of Wandsworth*, 70 J.P. 331, it would appear that the incidental costs and charges which can be recovered are the out-of-pocket expenses of the council and do not include the cost of work done by the council's salaried officials in making plans and estimates, preparing the apportionment, serving notices, collecting the money, and supervision.

Almost every word in the sections relating to paving expenses has been the subject of litigation. All that has been done in the previous notes is to call attention to the salient points in the procedure.

(*Concluded.*)

Blackmailers and the Law.

THE Lord Chief Justice's heavy sentences on a gang of blackmailers, and the successful combination of the police, magistrates, the judge, and the press, to keep the victim's name secret, are certainly all to the good in checking the worst form of this detestable crime. That form is based upon the threat to accuse a man of an offence punishable under ss. 61 and 62 of the Offences against the Person Act, 1861, or s. 11 of the Criminal Law Amendment Act, 1885 (under which the proceedings against OSCAR WILDE were taken). The knowledge is now spread broadcast that persons so threatened have, in the vast majority of cases, far less to fear from the police and the courts than from their persecutors, and blackmailers also will understand that if they, showing no mercy, extort money in this way, the court will have no mercy on them. Professional lawyers, a modest race, have stood aside and allowed the judge, the police and the press, to share between them 100 per cent. of the credit of the recent event. Yet perhaps their organ, THE SOLICITORS' JOURNAL, may point out that the doom of the blackmailers came about as the direct result of the victim crossing the threshold of his solicitor's office, and that, in whatever circumstances a sensible man may dispense with legal advice, he can least afford to do so when a blackmailer has fastened on to him and is sucking at his vitals. For solicitors are bound to secrecy, can approach the police, with whom they are friendly, without entangling their clients, and can deal with blackmailers, who are usually born cowards, and in mortal terror of those they cannot threaten, as they deserve. The victim in the above case paid over £10,000 to the gang. Had he approached his solicitors at first, it may safely be surmised that he could have rid himself of his incubus at 1 per cent. of that sum, or less. The happy entente between the profession, the police, the Bench and the press should then go far to stamp out this, the worst, form of blackmail. There remain however, other forms in which a lawyer may have no other alternative than to advise the payment of hush-money. These forms depend upon the use of civil process as an instrument of blackmail. The usual plan of campaign is the simplest possible. A possible victim is chosen, wealthy, respectable, and with a position to lose, and is enticed to a particular address by an attractive woman. The husband, or a man personating him, then bursts into the room and threatens divorce proceedings. A reference to the comparatively recent case of "Mr. A" will perhaps suffice as an illustration. The conspirators had some trouble to entrap their victim, but their reward might have made even "the Captain's" blackmailers envious, and the punishment of those who did not escape punishment altogether was trifling. Evidence was in fact given to the Lord Chief Justice that one of TAYLOR'S gang had used his wife as a decoy in this way, until she left him.

If a client consults a solicitor in such circumstances, what course can he take? He will, no doubt, investigate first of all whether the woman is really married, and, if so, whether the man who makes the claim is the husband. In the case of "Mr. A," it may be remembered, the services of a man other than the husband, were retained, because the latter was not considered so presentable for the part. Such investigation may clear away the crudest impostures. But the case may prove to be one of the troublesome type in which a couple, properly and legally married, set themselves out to blackmail in this way.

And here begin the difficulties. Any husband may bring a petition for divorce against his wife, and may cite any other man as co-respondent. If this is done, the latter's name comes into the published list of pending cases, and, if he is a doctor or schoolmaster, or other person depending on his moral character for his living, even this may do him grievous harm. The victim might have a good defence of collusion, though it is not always an easy matter to establish. But successful resistance to the divorce would be of no moment; it is manifest in such a case that the evidence in open court of his foolishness would ruin him. On the principle of the half-loaf, his solicitor can only advise him to pay hush-money, and to be more careful in future. The solicitor can at least ensure that the payment is final, and that, after it is made, there will be no more blackmail, but he can do little else. Some years ago a prominent man paid £30,000 to avoid being cited as a co-respondent; and, it may be added, the money was well invested.

In these circumstances, the strict moralist may urge that a man who is trusted because of his character, and suffers himself to be enticed by a woman, deserves all he gets; but, admitting these premises, the net result is that he continues his career, more or less financially crippled, and certain human parasites live in opulence without working. This cannot be considered a desirable result from any view-point.

To obviate it, legislation, or at least a change in the practice of the Divorce Court, is necessary. In the first place, the court should have power to order that the name of a co-respondent should not appear in the cause-list, if he can adduce *prima facie* evidence that the case is one of collusion and blackmail. The case should then go to open court on this issue, and the name of the co-respondent could be withheld in the same way and for the same reason that the name of the prosecutor was withheld in the recent criminal case. If there was a verdict of collusion the scheme of the blackmailers would be foiled, and other blackmailers in the same line would know that the threat of publicity by the use of the process of the Divorce Court would have lost its force. If on the other hand there was a verdict of no collusion, the

co-respondent's name could at once be published and the case proceed on the issue of misconduct in the usual way. As an analogy, it may be pointed out that the case of a bankrupt who appeals from his adjudication is reported "*In re* a Debtor," lest his credit be injured. And the shadow of the Divorce Court on a man's moral credit may be regarded as at least as harmful as that of the Bankruptcy Court on his financial status.

The undesirability of shielding a co-respondent from publicity is manifest. But persons accused of worse offences have been so shielded, and the court's discretion would always prevent abuse. The alternative is to allow the blackmailer to use the processes of justice for the purposes of his levies.

The action for breach of promise is another such process which may lend itself to blackmail. The plaintiff launches her action knowing she has no chance of success on the merits, but reckoning on the fact that she can publicly smirch the defendant's character, and, probably, procure his indiscreet letters to be read in court before her case is dismissed. She plays, of course, for compromise, and if the defendant faces the court, her blackmail has failed. If she has chosen her victim cleverly, however, publicity is ruin to him, and all his adviser can do as the law stands at present is to make the best terms with her, and see that she delivers to him all the defendant's letters.

In these circumstances it is suggested that breach of promise cases should be divided into two classes, namely, those in which the plaintiff alleges no moral offence against the defendant, and the others where she does so. The first class of cases is not used by blackmailers. In the second class the plaintiff comes into court as herself a moral offender, and it would be no injustice to her to put her upon terms to preclude blackmail. Probably the best way would be to require her counsel to certify that she had a reasonable case, as in the "poor person" procedure, where the plaintiff may have a spotless reputation. Both counsel and solicitors should be amenable to professional discipline if they assist blackmailers. A plaintiff could no doubt evade this requirement by appearing in person. Possibly a judge might frustrate her plan by forbidding her to read any compromising letter, or adduce any evidence against the plaintiff's moral character until the promise was proved. It would also be possible, of course, to exclude all evidence of moral misconduct in a breach of promise case altogether, but it seems undesirable to allow a defendant who has seduced his fiancée under promise of marriage any loophole of escape from appropriate damages. In the discussion above it has been assumed that the plaintiff in a breach of promise action is necessarily feminine, but the late Lord HERSCHELL in debate in the House of Commons stated that, in a case within his knowledge, an old woman had paid £1,000 to a young man who had entered an action for "breach" against her, to regain the foolish letters she had written to him and which she knew would be read in open court if the action was allowed to proceed.

Were blackmailers denied the Divorce Court and breach of promise actions for their purposes, they would have little left by way of civil process, but of course it is conceivable that a father and daughter might combine in blackmail by means of an action for seduction. Then, too, a woman of loose character, finding herself pregnant, may bring affiliation proceedings against the most opulent of her masculine acquaintances, in the hope that he will pay to avoid exposure of himself, rather than resist and win on proof of her own mode of life. In either case blackmail would be frustrated if the issue of the woman's character could be tried out before publication of the defendant's name.

It may be added that the possibilities of commercial or financial blackmail have not been overlooked, but there is no question of the abuse of civil process for such purposes, and s. 29 of the Larceny Act, 1916, seems adequate for dealing with this form of the crime.

Some Legal Aspects of Town Planning.

BY RANDOLPH A. GLEN, M.A., LL.B.
(*Editor of "Glen's Public Health," 1925 Edition.*)

(*Continued from p.* 419.)

V.

The following are the remaining observations of the Minister of Health upon the Sidcup Town Planning Scheme which formed the subject of my article last week:—

As to the "*parkways*," the Minister suggested that "these might most conveniently be shown on the Map as proposed public open spaces, i.e., coloured green and hatched dark green. The Council would be able, if they so desired, to provide a public right of way over the lands when acquired by them."

As to "*building lines*," the Minister said: "It will be necessary to show the proposed building lines on the Map at the draft scheme stage. With regard to the Council's proposal to prescribe a building line of 30 feet in a number of cases, the Minister doubts whether so deep a building line could be regarded as a normally reasonable requirement, and he suggests that it would be prudent to reduce the proposed set-back to 20 or 25 feet from the boundary of the street. With regard to the proposal of the Council to prescribe a building line of 10 feet from the boundary of the street in the case of Streets Nos. . . . the Minister suggests that the Council should consider whether a building line of 15 or 20 feet from the boundary of the street might not reasonably be prescribed, except in any areas which may be selected and shown on the Map as shopping areas. In the case of areas in which shops are allowed without consent, the Minister considers that, unless there is express agreement with owners on the subject, a set-back of 10 feet from the street boundary is as much as can generally be required without risk of injury to the interests affected," drawing attention to *Ellis' Case* (*ante*, pp. 342, 358). "It is also suggested that the Council should take a general power of permitting relaxations of prescribed building lines in the case of industrial buildings and groups of shops and in other special cases on the lines indicated in the Ministry's model form of Preliminary Statement. With regard to the proposed building lines on the two existing main roads, the Minister would be glad to be informed whether the County Council have been consulted in the matter and whether they concur in the proposals."

As to "*character zoning*," the Minister observed that "the Council propose to exclude industrial buildings absolutely from a large portion of the residential areas. He considers that so tight a restriction would be liable to create difficulties in practice. He appreciates the desire of the Council to preserve the residential character of these areas, but he does not consider it necessary for this purpose or prudent to exclude absolutely any class of building from large areas of land. Exceptional instances may occur in which a building may rank as industrial and nevertheless be innocuous."

As to "*shopping areas*," it was "observed that the Council have not selected any areas where shops and similar buildings may be erected without consent. The Minister considers that where development has sufficiently proceeded to indicate natural and convenient shopping sites, the sites should be left unrestricted as regards the erection of shops business premises and public buildings. Moreover, where a town planning scheme includes built-up lands in the form of outlying urban or village settlements . . . and these include sites already devoted to shopping and other general purposes, thus indicating a developing shopping and business centre, the Minister thinks that it is generally desirable that the sites, including any suitable extensions of them, should be so allocated."

As to "*industrial areas*," the observation was that "no provision has been made for areas where industrial buildings may be erected without consent. The Minister recognises that the development which has hitherto gone on in the area is mainly residential and that it is reasonable to allocate the bulk of the area in the scheme as primarily residential. He considers, however, that it would be desirable and prudent to select some lands where industrial buildings, other than buildings for offensive trades and alkali and similar works, may be erected without consent, and he suggests that with this object the lands edged and hatched purple on the enclosed plan should be zoned as areas where any buildings, except buildings for offensive trades, etc., may be erected without consent; buildings for offensive trades, etc., being allowed by special consent subject to appeal to the Minister."

As to *density zoning*, the Minister considered "that the density proposals of the Council are generally too restrictive. He doubts the advantage of the density limitation of 10 to the acre as well as 12. Moreover, he observes that the Council have proposed in some cases a density of 10 to the acre where development has already taken place in excess of that density. He thinks that the density of 10 to the acre should generally be increased to 12. On the evidence at present before him, the Minister does not consider that sufficient grounds have been shown for imposing so low a density as 8 to the acre on the lands coloured orange on Map No. 2, which are coloured yellow on the enclosed plan, and he suggests that the average density on these lands should be increased to 12 to the acre. He also suggests that an average density of 8 to the acre, instead of 6, might reasonably be allowed on the lands coloured brown madder on Map No. 2. The Minister does not consider that it would be reasonable to impose an average density of 12 to the acre on the lands coloured sepia on the enclosed plan, having regard to the depth of plot available and the type of neighbouring development, and he thinks that the average density of these lands should be increased to 20."

As to "*height*," the Minister suggested that the proposals should be amended thus: "Except with the consent of the Council in the case of public buildings and industrial buildings, (1) no part of any new building to project above a line drawn from the centre of the street in front of the building (or, where more than one street, the widest street) at an angle of 56 degrees with the horizontal; or 45 degrees in the case of subsidiary streets intended for residential use only, (2) the highest point of any new building in no case to exceed 60 feet. For the purpose of measurement, account to be taken of parapets, but not of chimneys, ornamental towers, turrets or any architectural features."

As to "*open spaces*," the Minister said that he "would deprecate generally the reservation of lands for private open spaces in the absence of specific agreement with owners in the matter or of exceptional circumstances," and suggested that some of the proposals should be omitted, particularly those with regard to which there had been opposition at the Inquiry. In view of the agreement reached at the Inquiry in regard to the golf course, it was suggested that this land "should be allocated as primarily residential at an average density of 8 to the acre." As to one of the proposed open spaces, the Minister said: "This land would appear to have considerable building value, and, in the absence of an agreement with the owners in the matter, its reservation as a private open space is liable to give rise to a heavy claim for compensation on the making of the scheme." Consultation with the owners was accordingly advised.

As to "*subsidiary street standards*," the Minister made the following important recommendation: "It is understood that the Council have not formulated any proposals for the relaxation of the standards of subsidiary streets in connection with the town planning scheme. In view of the proposed restriction on density of development and the control of street plans under town planning conditions, the Minister considers it important that owners should have the benefit of the fullest relaxation of the standards of subsidiary streets that can reasonably be granted. These standards might, it is considered, be reasonably more relaxed under town planning conditions than under bye-law conditions, and the Minister hopes therefore that the Council will carefully consider the adoption for the purpose of the town planning scheme and of interim development pending the completion of the scheme of the schedule of streets issued with the Town Planning (General Interim Development) Order, 1922. It is also suggested that the Council should consider, during the preparation of the draft scheme, whether there would not be advantage in dealing with street regulations wholly in the scheme (repealing the existing bye-laws as to streets) as suggested in the revised Model Clauses issued by the Department."

It is to be noticed that the Minister's decision is given in the form of "observations" and "suggestions," and in one place he says: "It will be realised that the proposed decision is based on the legal provisions governing the matter, and that it should not be taken as an expression of opinion as to the merits of the Council's proposal as a town planning measure." This indicates that the Minister is "open to conviction" that the Council's proposals will really be the best in the end.

Next week I propose to summarise another typical town planning scheme, that of the Sevenoaks Urban District Council.

(*To be continued.*)

Proof of Previous Convictions.

ATTENTION might usefully be drawn to the cases of *R.* v. *Hayward*; *R.* v. *Lawrance*, *Times*, 15th March, which deal with the question of the mode of proving previous convictions. The prisoners in each of these cases had been convicted as habitual criminals. Section 10 (2) of the Prevention of Crime Act, 1908, provides that in order that a prisoner may be convicted as a habitual criminal, it is necessary to prove, *inter alia*, that the prisoner has, since attaining the age of sixteen years and at least three times previously to the conviction of the crime charged in the indictment, been convicted of a crime. These three previous convictions must be proved strictly. This point was decided in *R.* v. *Franklin*, 1909, 3 Cr. App. Rep. 48, which case also appears to have decided that it is not necessary to prove any other convictions against the prisoner with the same strictness. There the production by a police officer of a register from Scotland Yard, showing that the previous conviction was held sufficient evidence of the "other" convictions, i.e., reconvictions other than the three, which are required to be proved strictly (e.g., by evidence of identification). According to the head-note to *R.* v. *Stewart*, 4 Cr. App. Rep. 175, however, "All previous convictions submitted to the jury must be strictly proved." In *R.* v. *Hayward*, *supra*, the court considered that the head-note in question was erroneous, and *Stewart's Case* may be explained on the ground that the convictions other than the statutory ones were not proved at all, since the learned judge merely read out these convictions from the calendar which was before him. If one examines the judgment of JELF, J., in *R.* v. *Stewart* (*ib.*, at p. 175), it would appear that the court took the view that these other convictions need not be proved strictly. Thus JELF, J., is reported as having said: "The procedure in this case was absolutely wrong, for the simple reason that there was no evidence of certain convictions; if there had been all would have been right. Nor do we say that it is necessary to prove them in any particular way."

R. v. *Culliford*, 6 Cr. App. Rep. 142, is similar to *R.* v. *Stewart*, since in that case, as well, the other convictions were

not proved at all, but were read out by the judge from the calendar. The court accordingly quashed the conviction. It is interesting, however, to note that no opinion was expressed as to what would have been the effect, had the judge, when mentioning the convictions, qualified them by pointing out that they had not been proved, and that therefore they must not be acted upon (6 Cr. App. Rep. at p. 145).

Quite apart from "habitual criminal" prosecutions, it would appear that in no case can a previous conviction be taken into consideration at all, unless there is some evidence thereof. Thus in *R.* v. *Seymour*, 17 Cr. App. Rep. 128, the sentence was reduced, since no evidence at all of the previous convictions against the prisoner was given, a mere list of the previous convictions against the prisoner being merely looked at by the judge in passing sentence. Reference may be also made to *R.* v. *Turner*, 18 Cr. App. Rep. 161. There the prisoner had been convicted of rape, and sentence was passed on him on the acceptance of a written statement by the prisoner that he had been previously convicted of rape. Neither the previous conviction nor the statement was proved, the statement merely having been placed before the judge. As the Lord Chief Justice pointed out in that case (*ib.*, at p. 162): "It cannot too clearly be understood that where previous convictions are relied on for any purpose in a trial, they must be either (*a*) proved by lawful evidence, or (*b*) expressly admitted by the accused person."

The conclusions to be drawn, therefore, are that except in cases where a conviction has to be strictly proved against a prisoner, i.e., by production of the certificate and evidence of identification, all other convictions may be proved, without strict proof, usually by the evidence of a police officer, who produces an official list of the convictions against the prisoner, and such evidence may apparently be dispensed with where the prisoner expressly admits the convictions. But there must be some evidence, and for the judge merely to have before him a list of the convictions, and even a written statement by the prisoner, containing admissions by the prisoner, will not be sufficient. There must be some evidence to connect the list or the statement, as the case may be, with the prisoner to whom they purport to relate.

The Law Relating to Smoke Abatement.

By J. LEIGH TURNER, Town Clerk, Blyth.

EXHAUSTIVE investigations conducted thoroughly and carefully by competent investigators have resulted in a mass of information which constitutes a heavy indictment against black smoke, the chief counts in the indictment being that it causes material loss, damage to health, spoliation of amenities, moral and spiritual devastation.

I only wish to deal with one aspect of the matter, which may be of interest—the law—not as it might be—but as it stands to-day. By a prudent and sagacious administration of the law as it stands, imperfect though it may be, a great deal can be done to improve the situation.

The emission of smoke, when it materially interferes with the ordinary comfort physically of human existence, not merely according to elegant and dainty modes and habits of living, but according to plain, sober, and simple notions obtaining amongst the English people, may be an actionable nuisance at common law, that is, a nuisance which apart from Act of Parliament violates the principles which the common law lays down for the protection of the public and of individuals in the exercise and enjoyment of their rights.

To be actionable it need not be actually noxious or injurious to health, nor need it be accompanied by noise or noxious vapours, and the fact that the smoke issues from premises in a manufacturing town, or that similar nuisances already exist in the locality, does not affect the question if it can be shown that the annoyance otherwise caused has been materially increased: *Crump* v. *Lambert*, 1867, L.R. Eq. 409, affirmed on appeal 17 L.T. 133.

The subject of common law nuisances need not affect local authorities or their officials, however, inasmuch as the only nuisances which local authorities can deal with are those which affect their own property or interests, or those which come within the purview of statutes imposing powers and duties upon local authorities. These latter are called statutory nuisances. It is well to remember this, as a local authority is often approached by private inhabitants in the vicinity of a nuisance with a view to the council dealing with the nuisance. The appropriate remedy in such a case would be for the aggrieved parties to apply for an injunction through the good offices of the Attorney-General.

If an action were commenced by the Attorney-General at the relation of the borough council, whilst perhaps no objection could be taken that the action was not maintainable (*Attorney-General* v. *Logan*, 1891, 2 Q.B. 100; *Attorney-General* v. *Tod Heatley*, 1897, 1 Ch. 510), in the event of the action failing, the payment of the costs incurred in prosecuting the action might be the subject of a surcharge.

The principal existing statutory provisions relating to smoke nuisances are contained in the Public Health Act, 1875 (hereinafter referred to as "the Act of 1875"), which has recently been materially strengthened by the Public Health (Smoke Abatement) Act, 1926 (referred to as 'the Act of 1926"), which comes into operation on the 1st July next.

Section 91 (7) of the Act of 1875 provides that any fireplace or furnace which does not so far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever, and any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance liable to be dealt with summarily in manner provided by the Act. An important proviso follows this enactment to the effect that where a person is summoned before any court in respect of a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance has been created if it is satisfied that such fireplace or furnace is constructed in such a manner as to consume as far as practicable, having regard to the nature of the manufacture, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having charge thereof. This was held not to apply to proceedings in respect of *black smoke* sent forth from the chimney of such furnace.

Important amendments have been effected to the above section by s. 1 of the Act of 1926, which provides that a nuisance is committed notwithstanding that the smoke emitted is not black smoke and that smoke includes soot, ash, grit, and gritty particles. By s. 3 the expression "chimney" includes structures and openings of any kind whatsoever capable of emitting smoke. This would include the funnel of a steamship, but nothing in the Act is to apply to any ship habitually used as a seagoing ship, or affect the enactments in force with regard to smoke nuisance and smoke consumption in any such ship. It is also provided that in any proceedings for sending forth smoke *other than black smoke* from a chimney in such a quantity as to be a nuisance, it shall be a defence for the person charged to show that he has used the best practicable means for preventing the nuisance, having regard to the cost and to local conditions and circumstances. "The best practicable means" for the purpose has reference not only to the provision and efficient maintenance of adequate and proper plant for preventing the creation and emission of smoke, but also to the manner in which the plant is used.

The question as to whether a nuisance has been committed, is a question of fact for the justices, and in deciding this they may take into consideration repetitions of the nuisance on several days. Moreover, each daily emission of smoke is a separate offence, for which separate summonses may be issued and separate fines inflicted. It is not necessary to show that the smoke sent forth is injurious to health as well as a nuisance, nor that any particular person or property has been injuriously affected by the smoke. The master is responsible for the default of his servants, and in *Nivin* v. *Greaves*, 1890, 54 J.P. 548, where Greaves' chimney sent forth black smoke for ten minutes, he was held liable, although his furnace was properly constructed and efficient firemen superintended, and the stoker's own negligence was the cause of the smoke.

Under s. 334 of the Act of 1875, certain mines and processes, such as the smelting of ores and minerals, the calcining, puddling, and rolling of iron and other metals, and the conversion of pig iron into wrought iron, were excepted from the smoke clauses, so far as the latter might obstruct or interfere with the efficient working of such mines and processes. Under the Act of 1926 more processes are excepted, such as those of re-heating, annealing, hardening, forging, converting, and carburising iron, and other metals, and other industrial processes, if the Minister of Health makes a Provisional Order to that effect. After the expiration of five years from the 1st July, 1927, the Minister may either conditionally or unconditionally, exclude any of the processes mentioned. The owner of a coal mine is thus protected if, but only if he can show that the smoke nuisance could not be prevented without interference with the efficient working of the mine: *Patterson* v. *Chamber Colliery Co.*, 1892-96, J.P. 200. It might be pointed out that the above provisions do not relieve the proprietors of mines or other specified industries from liability for a public nuisance in a suit brought by the Attorney-General for its abatement, nor from ordinary common law liability to a person whose property is injuriously affected by it: *Attorney-General* v. *Logan*, 1891, 2 Q.B. 100.

Under s. 94 of the Act of 1875, notice to abate a nuisance may be served by the local authority, on the person by whose act, default, or sufferance, the nuisance arises or continues, or if such person cannot be found, the owner or occupier of the premises upon which the nuisance arises. The occupier of the premises, however, and not the workman employed by him, is the proper person against whom proceedings should be taken, where a nuisance occurs from smoke from a factory chimney, although the fire from which the smoke proceeded was lighted by the workman: *Barnes* v. *Ackroyd*, 1872, 37 J.P. 116. The notice need not specify what works and things are to be done for the purpose of abatement: *Millard* v. *Westall*, 1898, 62 J.P. 135.

It is now further provided by the Act of 1926, that the smoke inspector must, as soon as practicable after becoming aware of the nuisance, notify the *occupier* of the premises, and if he does so verbally, he must confirm the notification in writing.

Section 102 of the Act of 1875 confers upon local authorities and their officers, powers of entry during business hours for the purpose of examining as to the existence of a nuisance or of enforcing the provisions requiring fireplaces and furnaces to consume their own smoke, either before or after abatement has been required.

Under the Act of 1926 any local authority may, and if so required by the Ministry of Health, shall make bye-laws regulating the emission of smoke, and also in respect of new buildings other than private dwelling-houses, requiring the provision of such arrangements for heating and cooking as are calculated to prevent or reduce the amount of smoke.

These powers are new, and local authorities should consider the advisability of making bye-laws on the lines mentioned.

Section 11 of the Act contains a very useful provision concerning the abatement of smoke nuisances upon Crown property, to the effect that the local authority shall report the circumstances to the appropriate Government Department, and that the responsible Minister, if satisfied of the existence of such nuisance, shall cause steps to be taken for its abatement.

Under s. 92 of the Act of 1875, it is provided that it shall be the duty of the local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement, and to enforce the provisions of the Act in order to abate the same; also to enforce the provisions of any Act in force requiring fireplaces and furnaces to consume their own smoke.

Failure on the part of local authorities to carry out their duties in respect to nuisances under s. 92 of the Act of 1875, may result in intervention by the Ministry of Health as the central authority, for, by s. 7 of the Act of 1926 (a section which should be regarded as a portent, having regard to the proposal of the Ministry of Health, that the county council shall be a supervising and controlling authority for all health purposes throughout the administrative county—a proposal which the non-county boroughs in particular strongly resent), it is provided as follows:—

> "If a County Council resolve that a Local Authority within the County have failed to carry out their duties under section 92 of the Public Health Act, 1875, in respect of smoke nuisances and make complaints thereof to the Minister of Health, or if a Local Authority after being required by the Minister so to do have failed to make such Bye-laws as are mentioned in this Act, the Minister may cause an inquiry to be held and, if satisfied from the result of such inquiry that the Local Authority have failed to carry out their duties adequately, may by order authorise the County Council to carry out those duties either for a definite period or until the Minister otherwise directs.
>
> "The Minister shall in any case where he considers it expedient to do so cause an inquiry to be held as to the manner in which a Local Authority have carried out their duties under the said Act with respect to smoke nuisances, and if satisfied from the result of such inquiry that the Authority have failed to carry out their duties adequately he may by order authorise the County Council to carry out those duties either for a definite period or until the Minister otherwise directs."

By evading its responsibilities the local authority does not avoid the expense, for it is further provided that any expenses incurred by a county council in carrying out any such duties shall be deemed to be a debt from the local authority to the county council, and shall be defrayed as part of the expenses of the local authority in the execution of the Act of 1875.

This section is the thin end of the wedge, and it behoves local authorities, especially non-county boroughs, to conduct the health administration of their areas so efficiently as to give no justification for interference either by the Minister of Health or the county council.

It is quite obvious that the Ministry of Health intends to ensure the carrying out of their powers and duties by local authorities, for by s. 8 of the Act of 1926 it is provided that every county council or other local authority shall, on being required to do so by the Minister of Health, furnish to him such information as he may from time to time desire as to its proceedings with regard to smoke nuisances.

Smaller local authorities have their way made easier by the provisions of a very valuable section of the Act of 1926—s. 6—to the effect that two or more local authorities may combine to carry out their duties with regard to smoke nuisances or for that purpose may concur in appointing a joint committee. It is understood that several local authorities have already entered into such a combination, and certainly the provision should be very useful to local authorities, especially the smaller authorities, as enabling them to combine in the expenses of carrying out their duties under the Acts.

In conclusion, attention may perhaps be drawn to other statutory provisions relating to smoke abatement. By s. 30 of the Towns Police Clauses Act, 1847, which is incorporated with the Act of 1875, it is provided that in urban districts the wilfully setting on fire or causing to be set on fire any chimney renders the offender liable to a penalty in addition to the liability to indictment for felony, and by s. 31 accidental chimney fires render the occupier in urban districts liable to a penalty unless it can be shown that there has been no omission, neglect or carelessness on the part of himself or his servant.

Under the Railway Clauses Consolidation Act, 1845, s. 114, every locomotive steam engine on a railway shall be constructed on the principle of consuming and to consume its own smoke, otherwise the company or party using it shall be forfeit £5 for every day during which it is used. By the Regulation of Railways Act, 1868, if an engine though properly constructed, fails to consume its own smoke so far as practicable, through the default of the Company or of any servant of the company, the company is liable, but this does not impose upon the company the obligation of burning coal which produces the least smoke: *London County Council* v. *Great Eastern Railway*, 1906, 2 K.B. 312.

Under the Highways and Locomotives Act of 1878, s. 30, every locomotive on a highway must be so constructed on the principle of consuming its own smoke, and any person using on the highway a locomotive not so constructed or not consuming so far as practicable its own smoke, is liable to a daily fine. The burden of proof is discharged by the prosecutor when he has proved that black smoke has issued; the onus is then on the defendant to show that the locomotive did consume its own smoke so far as practicable: *Pitt Rivers* v. *Glasse*, 1891, 55 J.P. 663. To establish the commission of an offence it is not necessary to show that the locomotive was on the highway the whole day: *Smith* v. *Stokes*, 1863, 4 B. & S. 84 (decided under the Highways Act, 1835). The section does not apply to "light locomotives" and 'heavy motor cars" if the weight of the car unladen does not exceed 5 tons, or together with an unladen vehicle drawn by it, 6½ tons, provided such locomotive is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause: Locomotives on Highways Act, 1896; Motor Car Order, 1904.

A Conveyancer's Diary.

Effect of the Decision of the Court of Appeal in *Re Ryder and Steadman*: (Trusts for Sale).

In conformity with the principles enacted in L.P. (Amend.) A., 1926, s. 1, the Court of Appeal have held in *Re Ryder and Steadman*, 1927, 71 Sol. J., p. 451, that the three vendors, who acquired the land before 1926, as tenants in common subject to a family charge, could make a title thereto subject to the family charge. This is on the footing that the entirety of the land vested in the vendors as trustees for sale under L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (2). The court seized on the words "immediately before the commencement of this Act" at the beginning of the paragraph, and accordingly held that "settled land," in sub-paras. (2) and (3) meant "settled land" under the old law: a convenient method of getting out of an admitted difficulty.

What would have been the decision, apart from s. 1 of the Amending Act, we need not trouble to predict. It seems, however, sufficiently clear that the decision does not apply to Pt. IV, para. 2 (dealing with undivided shares falling into possession after 1925), for there the expression is "and the land is not settled land when the shares fall into possession." That case is covered by S.L.A., 1925, s. 36, under which the entirety will vest in the former S.L.A. trustees subject to legal mortgages affecting the entirety, but free from incumbrances affecting undivided shares, not secured by legal mortgages, and from the limitations having priority to the trust for the tenants in common. We thus have one rule applicable where the shares fall into possession after 1925, and another where they fell into possession before 1926. Given that s. 1 of the Amending Act created a necessary exception, and no one would be likely to dispute this, the decision of the Court of Appeal does not give any cause for complaint, it merely operates to postpone the full effect of the new practice, as regards making title free from family charges, in a few cases.

But the decision that there can be a trust for sale validly subsisting subject to a family charge at once re-opens the question as to the meaning of "trust for sale" in the Acts; moreover the court expressed the view that it was extremely doubtful whether the documents creating the family charge could be coupled with the statutory trust for sale so as to create a compound settlement within S.L.A., 1925, s. 1, especially in view of the new sub-s. (7) providing that the section should not apply to land held on trust for sale.

In *Re Leigh's S.E.*, 1926, Ch. 852, reconsidered, 1927, W.N. 122, but for the fact that the trustees had been approved by the court, it would, it seems, have been held that the land would have vested in the tenant for life of the proceeds of sale.

Again, in *Re Lindsley*, 1927, 63 L.J. News, 375, there was a devise to trustees (who had not been approved by the court), subject to certain family charges created by a previous will; there being no tenant for life of the proceeds, it was held that the land vested under L.P.A., 1925, 1st Sched., Pt. II, para. 6 (*c*), in the S.L.A. trustees of the prior will, as statutory owners, and not under para. 6 (*b*) in the trustees for sale.

It may well be, therefore, that the suggestion we put forward (70 Sol. J., pp. 749, 769, 1154) that the expression "immediate binding trust for sale" should be construed as meeting *Re Goodall*, 1909, 1 Ch. 440, will ultimately be adopted; this point may possibly be made clearer when we obtain the full report of the decision of the Court of Appeal.

In the meantime we ought, perhaps, to call attention to S.L.A., 1925, s. 7 (5) (procedure on change of ownership). Under that sub-section if any person of full age becomes absolutely entitled to the settled land (whether beneficially or as personal representative or as trustee for sale or otherwise), free from *all* limitations, powers and *charges* taking effect under the settlement, he, in effect, is given a right to call for an assent or conveyance. But what is to happen if trustees for sale, who are not approved trustees or a trust corporation, become entitled *subject* to a family charge? Presumably the land remains settled land and must be vested in the statutory owners. This, however, is a case which can only arise after 1925, hence is not affected by the transitional provisions.

Until the meaning of "trust for sale" is decided by the Court of Appeal, we do not envy writers who have to keep their text-books up to date.

Powers of Personal Representatives: (*Re Trollope*).

We have now been able to read the full report of *Re Trollope*, 1927, 1 Ch. 596, the decision in which is not likely to be questioned, but there is something in it which is suspiciously like a *dictum* to the effect that A.E.A., 1925, s. 39, one of the most important sections in connexion with the curtain scheme, only applies to intestacies or partial intestacies, though sub-s. (3) expressly says that it applies "whether the *testator* or intestate died" before or after the Act.

The reason obviously was that the court was only referred to ss. 33 (trust for sale on an intestacy), 46 (succession on an intestacy) and 55 (1) (xi) (definition of "personal representative" only partially quoted).

No doubt s. 39 fits in quite well with intestacies, but it is equally applicable to testate cases. For instance ss. 3 (showing what "real estate" passes to the representative) and 24,

36 and 43 (relating to powers of disposition) were not mentioned. But perhaps, more important still, the court was not referred to S.L.A., 1925, ss. 110 (3) (protecting a purchaser dealing with personal representatives) and 13 and 18 (2) (saving the powers of representatives) further defined in s. 117 (1) (xviii), nor to L.P.A., 1925, 6th Sched., Epitome No. 1 (showing what is included in administration purposes). We have frequently called attention to the fact that the Acts of 1925 are interdependent, and we submit that the least that should be done is to call the attention of the court to the material enactments.

Landlord and Tenant Notebook.

Covenant to Cultivate in Husbandlike Manner.

Although the case of *Gardner* v. *Hirawanu* is a Privy Council decision in an appeal from the courts of New Zealand, the case is one which might be noted with advantage since the construction of a covenant to cultivate land in a husbandlike manner was considered there.

In this case unimproved and uncleared land covered with bush, part of which was covered with timber, had been demised for a term of forty-two years, one of the covenants being to the following effect: "The lessee will during the said term cultivate manage and use the said land in a husbandlike manner and will at all times keep the same free and clear of noxious weeds . . . "

It appeared from the evidence that the land when cleared was adapted for pasture, but that until it was cleared it could not be brought under cultivation, and that the only reasonable way of enjoying it was by clearing the whole of it, and felling not only the bush but also the timber.

The lessees felled the timber and sold it, prior to the complete clearing of the bush. The lessors thereupon claimed that their reversionary interest had been thereby affected, contending not that it would have been wrong to fell the timber at some time during the currency of the term, but that it had been felled too early, before the bush had been cleared elsewhere, and that the felling had been done not for the purpose of cultivation but with a view to making money by its sale.

The Privy Council held that the felling of the timber was justifiable, and that the lessors' claim failed. In arriving at this decision, the court pointed out that the covenant to cultivate in a husbandlike manner not only imposed a right, but cast an obligation on the lessees to fell the timber, and that the reversioners, the lessors, were not entitled to complain of any acceleration in the felling, though they were entitled to complain of delay in developing the land, by not clearing it (whether of bush or of timber) as soon as possible. That being so, and the lessees having the right or being under an obligation to fell the timber, were not bound to burn or destroy it, but were entitled to sell it and to keep the proceeds.

It is to be observed that it was only by reason of the fact that the lessees had a right or were under an obligation to cut the timber, that they were entitled to sell it and keep the proceeds. They would have had no such right otherwise.

As Lord Wrenbury pointed out in his judgment: "The reversioners are no doubt justified in saying that the timber is part of the land; that a lessee by virtue of his lease acquires only a special property in it; that he has not a general right to cut down and destroy it; that the general property remains in the reversioners; that the special property of the lessee is determined by severance and that if the timber is severed from the land the property, in the absence of some further right contained in the lease, vests in the person entitled to the first estate of inheritance. The question is whether under this lease on the facts of this case the reversioners have not granted to the lessee a larger right of property."

The court, as pointed out above, found that in the circumstances a larger right of property had been conferred on the lessees, since not only did they have the right to cut the timber, but they were also under the obligation of doing so during the currency of the term in order to comply with the covenant to cultivate in a husbandlike manner.

It is doubtful, however, whether the lessees would have had any such right as to cutting and selling the timber just prior to the expiration of the lease. If the cutting of the timber had been delayed so long, a breach of the covenant to cultivate, etc., would clearly have been committed, and as at that late date the covenant to cultivate in a husbandlike manner could not possibly have been fulfilled, the foundation of the right to cut the timber would no longer have been existent.

Reviews.

A Digest of the Law of England with reference to the Conflict of Laws. By the late A. V. Dicey. Fourth Edition by A. B. Keith. London: Stevens & Sons, Ltd.; Sweet and Maxwell, Ltd. 1927. La. 8vo; cxxiv and 1056 pp. £2 12s. 6d. net.

The mantle of the master has fallen on one of his own choice; and we are grateful for a fourth edition wherein our interest is aroused by "a certain amount of restatement and readjustment of detail." A portion of the restatement and readjustment was rendered necessary by the passing of statutes, which, though beneficent and long overdue, do raise problems in the realm of Conflict of Laws. It may not be uninteresting to refer to a few of these problems and to the tentative solutions of the learned editor.

First of all, what was the effect of the Administration of Estates Act, 1925, upon the rights of inheritance of persons legitimated *per subsequens matrimonium?* In other words, what was the effect upon the so-called rule in *Birtwhistle* v. *Vardill?* We say *was* the effect advisedly, for, as the learned editor points out in an Appendix, the rule itself has now been laid to rest by s. 1 (1), s. 3 (1) and s. 8 (1) of the Legitimacy Act, 1926—an Act which was a long way from the Statute Book when that Appendix was written. It is true that, in an apparently unguarded moment, the learned editor wrote on page 538: "Such a person (i.e., a person legitimated *per subsequens matrimonium*) . . . though legitimate, cannot be an English heir, and therefore cannot inherit English land . . ." But the context should make it clear that the generalisation refers only to cases not covered by ss. 45-47 of the Administration of Estates Act, 1925, i.e., to those cases which are hidden in a footnote on page 533 and which are covered by s. 51 (2)-(3) of the Administration of Estate Acts, 1925, and ss. 130-132 of the Law of Property Act, 1925. It is clear that no brief is held for the view that the rule in *Birtwhistle* v. *Vardill* is one of the "existing modes, rules and canons of descent" which were swept away by s. 45 (1) of the Administration of Estates Act, 1925. In fact the rule is confidently extended—to entailed interests in movables.

Again, what is the effect of adoption, under the Adoption of Children Act, 1926, upon the domicil of the adopted? The answer, based upon American authority, is given with confidence—that "the domicil of an adopted minor is, during the lifetime of the adopting parent, the same as, and changes with, the domicil of that parent." The Act, however, is applicable only to children of British *nationality* and adopting parents, resident in *and* domiciled in England (s. 2)—a fact which diminishes the importance of problem and answer. But it may not be irrelevant to mark the tendency to confine such legislation to British subjects (viz., the proposed Matrimonial Causes Bill, 1921, which intended *inter alia* to recognise divorces granted "in *British possessions and to British subjects*" on the ground of residence: Appendix, Note 14). The learned editor is of opinion that the Act "evaded serious difficulties by making no attempt to interfere with the property rights of the child in relation to his natural parents, or to

confer upon him rights in respect of the property of his adoptive parent or parents." But this opinion is not supported by his illustration in a footnote to page 510.

Again, has the Guardianship of Infants Act, 1925, given to a mother any power to change the domicil of her child? We are told that "As the two parents are now placed on an equality . . . there appears no good reason for denying to the mother, being guardian, any power to change the domicil of a child when a widow by her own change of domicil. It is, however, still open to argument that a change of domicil by re-marriage should not be regarded as changing the domicil of the child if it does not live with its mother in the actual place in which she is domiciled." Perhaps a more interesting reflection upon the Act is to be found in a footnote to p. 538—"It does not appear that the more recent doctrine which places the interests of the children above all other considerations would alter the position as regards foreign guardians . . . cf. *Ward* v. *Laverty*, 1925, A.C. 101."

In marked contrast to the policy of these two Acts we have the case of *A.-G. of Alberta* v. *Cook*, 1926, A.C. 444—the inclusion of which emphasises the thoroughness with which the fourth edition has been brought up to date.

In that case the Privy Council decided that a decree of judicial separation (made under s. 16 of the Matrimonial Causes Act, 1857) does not enable the wife to acquire a domicil different from that of her husband, and thus entitle her to sue for a divorce in a court other than that of the husband's domicil. For the purpose of divorce jurisdiction husband and wife are therefore still one, and the husband that one—a general rule from which the learned editor dislikes all departure, though he agrees that it "negates the whole trend of modern legislation."

Two recent decisions show "the hesitation with which English courts recognise in foreign courts an authority which they themselves freely claim and exercise." The first is *Mitford* v. *Mitford*, 1923, P. 130, which established the view expressed in earlier editions—that a foreign court is competent to declare the nullity of any marriage celebrated in that foreign country. The other is the decision of the Court of Appeal in *re Lorillard*, 1922, 2 Ch. 638, rightly called "an extension of jurisdiction in an unassuming form . . . incompatible with the more general view that the administrator in the domicil is the proper person to distribute, or at least, that the ancillary administrator ought to distribute in the same manner as would be followed by the principal administrator." The testator was domiciled in New York, and died in England, leaving assets and creditors both in England and America. Administration proceedings were taken in both countries. In the English administration, after payment of all creditors, there was a surplus available for beneficiaries, but in the American administration the assets were exhausted, leaving unpaid certain creditors, whose debts were statute barred by the law of England, but not so by the law of New York. The English court, in the exercise of the discretion which it claimed, refused to order the surplus to be transferred to America for distribution among the American creditors. The learned editor suggests that "the discretion . . . was doubtless largely motived by the fact that the beneficiaries were in England, and that it seemed inequitable to allow their expectations to be defeated by the admission against the estate in the country of domicil of debts which were time-barred under English law." If the suggestion be well founded, we must conclude that it is for the *forum conveniens* to choose between the *lex fori* and the *lex domicilii*, and that its choice is influenced by the domicil of the beneficiaries and the consequent probability or improbability of action being brought against them in the *forum domicilii testatoris*. It is poor comfort to say that this conclusion "does not actually conflict with any earlier decision of the English courts."

The subject of debts, their *situs* and their assignment, is treated of in two supplementary Notes—the second an answer to the doubts cast upon r. 153 by Greer, J., in *Republica de Guatemala* v. *Nunez*, 42 T.L.R. 625. We feel compelled to agree with the learned editor's conclusion that "the rule that the validity of a contract is governed by its proper law applies only to contracts proper, and it is not clear that it can effectively be extended to assignments." Rule 153 was subsequently accepted with hesitation by the Court of Appeal, when Bankes, L.J., disclaimed its applicability to the case under review—"Priorities of two assignments of equities or contractual rights in the same property are not determined by the *lex loci contractus* because they are not intrinsic to or dependent on the contract; on the contrary, they are extrinsic to the contract and are imposed upon the parties to it by the *lex domicilii*. Since here the problem was one of priorities, Dicey's Rule 153 has no application." We must wait till the next edition for the learned editor's reply.

No review of this edition would be at all complete without a reference to the case of *Re Annesley*, 1926, 1 Ch. 692—a case which has been debated at length in these columns—see vol. 70, p. 1016, and p. 1137. The learned editor concludes that the doctrine of *renvoi* in the sense accepted by Russell, J., "fits adequately all cases, and has the authority of its application by the Judicial Committee of the Privy Council." That application occurred in *Bartlett* v. *Bartlett*, 1925, A.C. 377—a case to which a special note is devoted.

These interesting problems have caused a slight increase in the bulk of the volume; it now measures 1056 pages. We are tempted therefore to ask whether certain matters *do* belong to the realm of Conflict of Laws; e.g., nationality, immunity of state-owned ships, confiscation of property within territorial limits, are all matters which seem more properly to belong to the realm of Public International Law. Their exclusion from future editions would not only keep the bulk of the volume within reasonable limits; it would also enable us to give a more confident answer to the question, what *is* Private International Law?

Books Received.

Heritable Rights in Scotland. Manual for Conveyancers on Examination of Title. Alfred J. Clarke. 1926. Demy 8vo. pp. xii and 130, with Index. Edinburgh and Glasgow. William Hodge & Co., Limited. 6s. net.

Destination and Vesting, according to the Law of Scotland. Alfred J. Clarke. 1927. Demy 8vo. pp. xix and 92, with Index. Edinburgh and Glasgow. William Hodge and Co., Limited. 6s. net.

Law of Intestate Succession in Scotland with Comparative Tables showing Division of Moveables in Scotland and in England, and Notes of Intestate Estates in the Dominions. 1927. James Walker, M.A., Advocate. Demy 8vo. pp. xxi and 188, with Index. Edinburgh and Glasgow: William Hodge & Co., Limited. 15s. net.

Encyclopædia of the Laws of Scotland. Consultative Editor, The Right Hon. The Viscount Dunedin, P.C., G.C.V.O. General Editor, John L. Wark, K.C., LL.B. (Sheriff of Argyll). Assistant Editor, A. C. Black, K.C., LL.B. Vol. II: Carriage by Land to Common Property. Medium 8vo. Edinburgh: W. Green & Son, Limited, Law Publishers. 57s. 6d. net.

The Conduct of and Procedure at Public and Company Meetings. Albert Crew. Ninth Edition. 1927. Crown 8vo. pp. xxxiii and 351, with Index. London: Jordan & Sons, Limited. 5s. net.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of the paper only, and be in triplicate. Each copy to contain the name and address of the Subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Rent Acts.

The following supplementary answer is given to *Q.* 788:—

If the owner has in fact been continuously in occupation of the whole of the premises prior to and ever since August, 1914, then we are of opinion that inasmuch as the dwelling-house is decontrolled, the mortgage is also automatically decontrolled, and that, too, notwithstanding the provisions of s. 12 (6) of the Rent Act of 1920. As far as we are aware, however, there is no direct decision on the point. The above proposition, however, is subject to one important modification. If the mortgagor has attorned tenant to the mortgagee, it will be necessary to consider whether any rent is payable by the former to the latter. If the rent is a peppercorn rent, or so small as to be less than two-thirds of the rateable value of the premises, then the above proposition will not be affected. If, however, the mortgagor is a tenant to the mortgagee at a rent which brings the Rent Acts into operation, then of course the premises will not be decontrolled, nor will the mortgage.

Searches in Bankruptcy.

803. *Q.* On a purchase, is it now necessary to make a separate search in bankruptcy against the vendor, or will a search in the alphabetical list at the Land Registry be sufficient?

A. See the answer to *Q.* 82, p. 260, vol. 70. In view of ss. 3, 6 and 7 of the L.C.A., 1925, searches for *lis pendens* and writs and orders cover post-1925 bankruptcies.

L.P.A., 1922, s. 129—Vesting Deed—Appointment of New Trustees under the S.L.A., 1925—Whether "Assurances."

804. *Q.* By his will made in the year 1914, A devised his whole estate, both real and personal, unto his wife B for life, and on his death to be divided equally amongst his several children. Testator appointed B sole executrix and the children trustees. Testator at the date of his death in 1923 was the owner of certain copyhold properties. B, in accordance with the provisions of the will was admitted tenant for life upon the terms and conditions contained in the will. In the year 1926 B approached the steward with a view to entering into a compensation agreement with the lady of the manor. The steward contended that B had no power of sale under the will, and that she was not a person within the meaning of s. 138 (3) of L.P.A., 1922, who on a sale would be able to dispose of the land affected by the manorial incidents. Consequently a vesting deed was executed, and an appointment of trustees made, and B now comes within the meaning of s. 138 (3) and is able to enter into a compensation agreement. Both the vesting deed and the appointment of new trustees have been produced to the steward of the manor in order that the steward may see that B is now clothed with the requisite legal estate sufficient to enable her to enter into the compensation agreement. The steward contends that both the vesting deed and the appointment of new trustees must be registered with him under the provisions of L.P.A., 1922, s. 129, for without production and registration the steward would have no record of B's ability to enter into the compensation agreement. Should the vesting deed and appointment of new trustees be registered with the steward under s. 129?

A. It is assumed that "on his death," *supra*, is a clerical error for "on her death." So far as the safety of the steward or his client is concerned, a covenant to produce the vesting deed and appointment entered into on the compensation agreement by B and the trustees respectively, would meet the point. The question remains, however, whether vesting deeds and appointments of new trustees are "assurances" within s. 129 (9) of the L.P.A., 1925. The definition of "assurance" in this sub-section is not complete, but perhaps may be supplemented as "something which operates as a transfer of property" (see *Re Ray*, 1896, 1 Ch. 468, at p. 476). On this footing it is arguable that a vesting deed executed in favour of a tenant for life, who, by statute, is already entitled to the fee simple, is not such a transfer. Having regard to s. 188 (29), it may be presumed that "vesting declaration," operating to vest land, etc., in s. 129 (9) refers to one made under the T.A., 1925. On the other hand, the vesting deed operates to confer on the tenant for life an interest with which he can deal, one of the most valuable rights of property. As to the appointment, although trustees for sale may for certain purposes have an 'interest' in land (as to which possibility see 'A Conveyancer's Diary," pp. 769, 770, and *Darlington* v. *Darlington*, p. 775, vol. 70, Sol. J.), trustees for the purpose of the S.L.A., 1925, take no estate in the land, and the opinion given here is that no "interest" is vested in them within s. 129 (9) (as to such right of interference as they may have, see *Hatton* v. *Russell*, 1888, 38 C.D. 334, at pp. 344-345, substituting, of course, reference to s. 93 of the S.L.A., 1925, for s. 44 of the S.L.A., 1882). At the same time it is to be noted that s. 93 deals with "the trustees of the settlement, or any other person interested in the settlement." Having regard to the very stringent provisions of the L.P.A., 1925, s. 129 (1), it may be regarded as the safest course to produce both documents under it.

Mortgage of a Policy by a Surety—Payment off—L.P.A., 1925, s. 115 (2)—Effect.

805. *Q.* A husband and wife by a deed dated in 1920, mortgaged freehold property to an insurance company, the husband joining in as surety in order to mortgage a policy on his life. It is now desired to pay off, but the method of discharge seems to be a matter of some doubt, for, if a statutory receipt in the form contained in the schedule to the L.P.A. is used, this appears to give to the wife under s. 115 of that Act an interest in the policy as being one of the persons paying the money, but she is not, in so far as the policy is concerned, entitled to the immediate equity of redemption. Is it sufficient to provide that the discharge is not to operate as a transfer or should there be a formal reassignment to the husband of the policy?

A. If the receipt which frees the policy does not state the name of the payer, the L.P.A., 1925, s. 115 (1) and (2) will not apply, even assuming sub-s. (3) does not apply, which it would appear to do, since the wife would have no right to keep the mortgage on her surety husband's policy alive. Or again, the operation of sub-s. (2) might be expressly negatived, with the wife's concurrence, in the receipt on the mortgage of the policy, in accordance with s. 115 (2) (*a*).

Death of Tenant for Life after 1925—Undivided Shares—Death of one Reversioner Intestate in 1915—Gavelkind Land—Title.

806. *Q.* By his will dated the 9th December, 1911, a testator bequeathed a small farm in Kent to his brother G.C. during his life, and at his death "to the family in equal proportions"

of his nephew J.C., and appointed C.H. his sole executor. Testator died in June, 1913, and his will was proved by the sole executor in July 1913. C.H. is still living, G.C. the tenant for life died on 9th May, 1926. J.C. had four children who are all living except one son who was killed in the War in May 1915. He (the son) was unmarried, and died intestate and left his mother and two brothers and one sister surviving him. The mother has since died. G.C., the tenant for life had practicaly no assets, and no representation has been taken out to him. The farm is only worth about £350 and the three surviving children of J.C. wish to have it conveyed to them. How can this be most easily carried out? The legal estate does not appear to be in C.H. the sole executor of the testator.

A. From the extract from the will above, the family of J.C. appear to have taken vested reversionary shares on the death of the testator, subject to the life interest. Assuming the farm was of gavelkind tenure, the share of the man killed in the war descended to his two brothers: see *Re Chenoweth*, 1902, 2 Ch. 488. On 1st January, 1926 G.C.'s legal tenancy for life was enlarged into a legal fee simple, which, assuming he died intestate, is now vested in the Probate Judge under the A.E.A., 1925, s. 9. It is therefore essential to title that a grant of letters of administration be made to special representatives under the J.A., 1923, s. 162 (1), and probably the authorities will require a general grant to be taken. G.C.'s special representatives can then sell under the L.P.A., 1925, 1st Sched., Pt. IV, para. 2, or convey to the three surviving children of J.C. as the persons entitled, but in the latter case a future purchaser would probably make a requisition requiring representation to be taken out to the deceased brother's estate if this has not been done. Possibly this might be barred by contract, but it would seem best to put the title in order by someone obtaining representation and conveying the deceased's interest to the surviving brothers.

CONVEYANCE AS JOINT TENANTS TO PERSONS ENTITLED IN EQUITY AS TENANTS IN COMMON.

807. *Q.* L.P.A., 1925, s. 34, deals with the case of land expressed to be conveyed in undivided shares, i.e., to persons as tenants in common. Section 36 deals with the case of a legal estate *beneficially* limited to persons as joint tenants. What provision is made for the intermediate case, where land is conveyed to persons either expressly as joint tenants, or without any such definition, but such persons are in fact, *e.g.*, as partners, beneficially entitled in common? In cases under s. 34 the land is held on the statutory trusts; in cases under s. 36, upon trust for sale. The former trusts are wider than the latter. Property was conveyed in 1926 to three persons who were partners, and was intended to be a partnership asset. The habendum says no more than "to the Purchasers in fee simple." It is presumed that they took the legal estate as joint tenants. One partner (with the consent of the others) has sold his share of the partnership property to a fourth party. Should the transfer of the freehold property be effected by the retirement of the selling partner from the trust, and the appointment of the new partner as a new trustee? And if so, of what trusts should the new partner be expressed to be appointed a trustee?

A. Re Selous, 1901, 1 Ch. 921, is authority that if land is conveyed to A and B jointly upon trust for themselves as tenants in common, they take jointly at law and in equity. A partnership deed, however, would ordinarily contain provisions to negative a simple tenancy in common, by a trust for the firm, and working out mutual rights on the death of a partner. Why do the questioners say that trusts for sale under s. 34 are "wider" than those under s. 36? Section 28 (1) applies in each case, giving very wide powers to the trustees. In the case put the old partners may convey as trustees to the new partners without any mention of the specific trusts created by the partnership agreement. There being a statutory trust for sale, s. 27 (1) of the L.P.A., 1925 will apply to prevent a purchaser from making requisitions as to the trusts of the proceeds.

DEVISE—CONSTRUCTION—JOINT TENANCY OR SUCCESSION WITHIN S.L.A., 1925—TITLE.

808. *Q.* In 1914 D.A. by his will appointed his wife A.A., his son F.A., and his daughter L.A. (thereinafter referred to as his trustees) to be his executors and trustees and trustees for all the purposes of the S.L. Acts, 1882-1890, and of s. 42 of the Conveyancing and Law of Property Act, 1881. He gave, devised and bequeathed all his real and personal estate whatsoever and wheresoever unto his trustees upon trust as to his real estate and his personal estate to sell, call in and convert into money his *personal* estate, and thereout pay his debts, etc., and to invest the residue of the money produced by such sale and to pay the income of the rents and profits arising from his real estate unto his wife A.A. for life, and from and after the decease of his wife he directed his trustees to stand possessed of his *real estate* and residuary personal estate upon trust as to his freehold dwelling-house in trust for the said F.A. and L.A. during their joint lives and for the survivor of them absolutely. The said D.A. died in 1915 and his will was duly proved by all his trustees in 1915. The widow A.A. died in December, 1925. It is now proposed to sell the testator's freehold dwelling-house. The vendor's solicitor contends that F.A. and L.A. were absolutely entitled on the 1st January 1926, and if they, as personal representatives of D.A., execute an assent to themselves for an estate in fee simple as joint tenants legally and beneficially they can sell as beneficial owners giving as his reference L.P.A., 1st Sched., Pt. IV, para. 1 (2). The purchaser's solicitors contend that the land is settled land within the meaning of the S.L.A., as F.A. and L.A. are not trustees for sale, and that therefore the case does not come within the 1st Sched. of the L.P.A., as suggested by the vendor's solicitor, and they also contend that F.A. and L.A. were not absolutely and beneficially entitled to the fee simple absolute in possession within the meaning of the L.P.A. They further contend that, in view of s. 19 of the S.L.A., a conveyance can only be taken after a vesting deed has been executed by the said F.A. and L.A., and that the conveyance must be made under the S.L.A. We should be obliged to have your opinion as to the manner in which a conveyance can be made and as to which of the above contentions is correct.

A. On the construction of the will as recited above, the gift to F.A. and L.A. has all the incidents of a joint tenancy and no others, and the opinion is therefore here given that on 31st December, 1923, they held the dwelling-house as joint tenants in fee, and therefore on trust for sale under the L.P.A, 1925, s. 36 (1), 1st Sched., Pt. IV, not applying, because, having regard to the S.L.A., 1925, s. 19 (2), and other provisions in the new Acts, "undivided shares" must be taken to refer to tenancy in common. They can therefore make title according to the contention of their solicitors, the legal estates having become vested in them pursuant to the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*b*). Assuming the widow of D.A. was in beneficial possession from 1915 to 1925, a court would imply the assent of the executors in accordance with the law laid down in *Wise* v. *Whitburn*, 1924, 1 Ch. 460.

A MORTGAGE PRECEDENT.

809. *Q.* I shall be much obliged if you can refer me to the best precedent of a third mortgage in circumstances where the first mortgagee and the third mortgagee are one and the same person, but in the case of the first mortgage he advanced the money in a representative capacity, and is now lending privately on the third mortgage.

A. The questioner can hardly expect to find an exact precedent. Assuming the case does not come within the L.P.A., 1925, s. 94 (1), the abolition of the right of "tacking" by that section minimises the importance of the identity of the first and third mortgagees, and an ordinary precedent of a

puisne mortgage might easily be adapted, as "Prideaux," 22nd ed., Vol. II, p. 117, No. IX. There is also one in Encyclopædia F. & P., 2nd ed., Vol. X, Prec. 77, p. 129.

WHETHER EXECUTORS TRUSTEES.

810. *Q.* A testator made his will dated 14th December, 1882, as follows: "I do hereby bequeath all my property and household goods and everything which belongs to me to my wife as long as she lives and at her death to be divided equally amongst my children A, B, C and D respectively and do hereby leave as executors to carry out the above (my will) my sons B and E." Testator died in 1882 and his widow in 1923. Both the executors are dead. The son B died in his mother's lifetime intestate, leaving a widow and one son (both still living and of age). A daughter, A, also died in her mother's lifetime a spinster and intestate. In neither case have letters of administration been taken out. On the death of the executor B a new trustee, F, was appointed of the will in place of B, it being assumed that under the peculiar wording of the will the executors were also trustees. The appointment contained the usual vesting declaration. The executor E died in 1923. An opinion is desired on the following points:—

(i) Was the deed of appointment valid and, if so, can F, the sole surviving trustee, sell the outstanding estate consisting of leasehold property?

(ii) What is the effect of the L.P. Acts upon the above? Is the leasehold property vested in the Public Trustee? If so, new trustees can be appointed and they can sell.

(iii) Will it be necessary for letters of administration to be taken out in respect of the shares of the deceased son and daughter?

A. The true question involved is one of construction of a will, on which opinions can only be here given subject to the reservation that they might be reversed on perusal of the whole. On the extract above, however, the case appears to fall within *Davies* v. *Jones and Evans*, 24 Ch. D. 190, and, on this footing, the executors, after clearing the estate, took the legal estate in the leaseholds as trustees. Thus the case on 1st January, 1926, fell within the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1). In answer to the questions, therefore:—

(i) Yes to both, subject to the appointment of a new trustee to give receipt in accordance with the T.A., 1925, s. 14.

(ii) As above.

(iii) Not for the title to the land, but in order that the trustees may obtain valid receipts for A's and B's shares.

DEVISE TO TWO—EXECUTORS' DUTY—WILL OF UNDIVIDED SHARES.

811. *Q.* A, by her will made in 1908, devised a freehold house to two nieces in equal shares as tenants in common and appointed two executors (not trustees), one of whom predeceased the testatrix. A died in January, 1927, and probate was granted to the surviving executor. The two nieces do not wish the house to be sold, but require the executor to transfer the property to them. How should this be done? The note on p. 857 of Vol. 3, of Prideaux, suggests that the method of assent is available, but we feel some doubt as to whether this is so. By virtue of s. 34 (3) of the L.P.A., 1925, the property vested in the executor not only in his capacity as such, but also as sole trustee upon the statutory trusts (there being no trustee of the will for the purpose of the S.L.A., 1925). The executor does not require to deal with the property for administration purposes, and in asking for the house to be transferred to them the two nieces are exercising their powers under the proviso to L.P.A., 1925, s. 3 (1) (*b*). The transfer by the executor to the nieces will be made not in his capacity as personal representative, but as trustee for sale, and it seems to us that the following documents are required: (1) Assent by the executor as personal representative to himself as trustee upon the statutory trusts; (2) Conveyance (which will contain recitals setting out the will, devise, etc.) by the trustee to the two nieces as joint tenants upon trust for sale with power to postpone and to hold the proceeds of sale or net rents for themselves in equal shares.

A. The course indicated will, no doubt, be a very safe one, but the word "conveyed" in the L.P.A., 1925, s. 23, includes "assented to the devise of," see s. 205 (1) (ii), and the precedent No. VII, in "Prideaux," vol. 3, p. 850, should therefore also be a safe one to follow. In effect, the right conferred by s. 3 (1) (*b*), proviso, if exercised, over-rides the statutory trusts of ss. 34 and 35, and the executor is restored to his original function.

INFANT ENTITLED IN FEE CONTINGENTLY ON ATTAINING FULL AGE—ATTAINMENT OF AGE—PROCEDURE.

812. *Q.* R, who died in 1918, by his will gave two small freehold houses to his trustees upon trust for an infant and to apply the income towards the infant's maintenance during infancy. The will contains a provision if the legatee dies in infancy for a gift over with a trust for sale in favour of the trustees in certain contingencies. The beneficiary having come of age has called for a conveyance of the houses from the trustees. What steps are necessary by the trustees to effectually vest the houses in the beneficiary?

A. Assuming the devisee was an infant on 1st January, 1926, the S.L.A., 1925, 2nd Sched., para. 3 (1), applied to vest the property in the trustees, who were trustees of the settlement within the Act under s. 30 (1) (iv) as having a future trust for sale, "whether taking effect in all events or not." The devisee having come of age, the land must be conveyed to him by the trustees under s. 7 (5), and this will effectually vest it in him.

UNDIVIDED SHARES—COALESCING IN ONE TENANT FOR LIFE ON 1ST JANUARY, 1926—TITLE.

813. *Q.* By the will of J.B., who died in 1867, his equal third part of Blackacre, a freehold property, was settled upon trust for J.L. for life, and after his death upon trust for the sons of J.L. in tail with various remainders, and an ultimate remainder to the right heirs of J.B. By the will of R.B., who died in 1878, his equal third part of Blackacre was settled upon trust for J.L. for life and after his death upon trust for the sons of J.L. in tail with various remainders and an ultimate remainder to the right heirs of R.B. By the will of S.B., who died in 1886, his equal third part of Blackacre was settled upon trusts giving a protected life interest to J.L. and after his death upon trust for the sons of J.L. in tail with various remainders, and an ultimate remainder to the right heirs of S.B. J.L. is still alive and has not done or suffered anything which brings into operation the discretionary trusts under the protected life interest given by the will of S.B. A, B and C are trustees for the purposes of the S.L.A. in the case of each will.

(*a*) Is J.L. entitled to have the legal estate vested in him under any or all of the wills?

(*b*) If he is so entitled under all of the wills, can the legal estate be vested by one deed or must a separate deed be executed under each of the wills?

A. On the 1st January, 1926, J.L. was tenant for life of two one-third shares in Blackacre, but he was probably not tenant for life of the share subject to the protective trusts (*Re Atkinson*, 1886, 31 Ch. D. 577); the shares were subject to different settlements. In our view therefore the land is now subject to a trust for sale, and the legal estate is vested in the public trustee under L.P.A., 1925, 1st Sched., Pt. IV, para. (4).

SETTLED LAND—DEATH OF TENANT FOR LIFE—UNDIVIDED SHARES—TITLE.

814. *Q.* A, who made his will in 1913, bequeathed a freehold cottage and land to his wife B, for life, and after her death directed the cottage and land to be sold and the proceeds equally divided between his children, and appointed B sole executrix. A died in 1919, leaving B and five children all

of age, him surviving. B proved the will in 1919. A's eldest son died in 1921, leaving three children, all under age. B died on the 30th December, 1926, without any vesting deed or assent having been executed, and two of her children obtained a general grant of administration to her estate, including settled land. A's children have now agreed to sell the freehold cottage and land, the consideration being only £175. We, therefore, do not wish to go to the expense of obtaining letters of administration *de bonis non* (with will annexed) of A's estate, nor apply to the Court. Can you suggest an alternative method of conveying the property? For instance, could B's administrators sell?

A. B's administrators, in whom the settled land is vested pursuant to the J.A., 1925, s. 162, can sell under the statutory trusts, see L.P.A., 1925, 1st Sched., Pt. IV, para. 2.

FORMER TENANT IN COMMON—PURCHASE OF ALL INTERESTS BY ONE—TITLE.

815. *Q.* On the 1st January, 1926, A and B were tenants in common in equal shares of Blackacre, a parcel of freehold property. B died on the 1st July, 1926, intestate, a spinster, leaving A and C, her brothers, her next of kin, who thereupon became entitled to B's beneficial interest in one-half of the proceeds of sale of the property. A is desirous of purchasing the one-fourth interest in the proceeds of sale of his brother C. Do you consider that a conveyance by B's administrator (namely C) to A of B's beneficial interest is sufficient for A's protection? Would A then be able to give a good title to a purchaser without the appointment of an additional trustee?

A. On the reasoning given in the answer to *Q.* 244, p. 541, vol. 70, A can make title without a co-trustee on production of C's conveyance, and of C's letters of administration, for which C should give A an acknowledgment of production under the L.P.A., 1925, s. 64.

OBLIGATION TO REPAIR RIGHT OF WAY—NATURE—WHETHER REGISTRABLE UNDER L.C.A., 1925.

816. *Q.* Where in a conveyance reserving a right of way subject to the owners of the dominant tenement on request paying their rateable proportion of the expense of repairing the road (similar to the precedent p. 474, Vol. I Prideaux) could you please say whether this needs registration, either as a land charge or as a local land charge. There is also a declaration as to a party wall and its repair by the joint users. Note on p. 474 shows that the easement itself needs no registration, and in this case there is no express covenant to bear the proportion of the expense (see note, p. 733, Vol. I, Prideaux), but there is the liability on the part of one who uses the private right of way to share the expense of repair and the question is, does this need registration?

A. The cases cited in note (*h*), p. 733, Vol. I Prideaux, *supra*, show that this obligation cannot take effect as a covenant running with the land. Nor is it a legal estate recognised in the L.P.A., 1925, and, as an equity, it would be a perpetuity. The opinion here given is therefore that it is neither an estate nor a "charge affecting land" within the L.C.A., 1925, s. 10, Class C or D, and so is not registrable. The precedent on pp. 473-474 is of a grant rather than a reservation of a right of way, but in either case the obligation on the owner of the dominant tenement to pay for repair will not run with the land, but will take effect, so far as it may do so, as a personal covenant. Equally, however, the owner of the servient tenement is free from any obligation to repair, and the matter may resolve itself, when the road becomes "foundrous" into a mutual arrangement to obviate a common inconvenience. The rights and obligations of owners of party walls, apart from express covenant, are fully considered in *Jones* v. *Pritchard*, 1908, 1 Ch. 630, quoted as good law in *Pwllbach Colliery Co., Ltd.* v. *Woodman*, 1915, A.C. 634, at p. 647. In effect, if a particular owner alone wishes the wall to be repaired, he must do it himself, but his neighbour must allow reasonable entry on his premises for this purpose. The applicability of *Jones* v. *Pritchard* would appear to be increased rather than diminished by the L.P.A., 1925, 1st Sched., Pt. V, para. 1. For the reasons above the obligations under a covenant to repair a party wall will not run with the land. But if such a party wall is likely to fall for want of repair, and each owner waits for the other to incur the expense, they can only blame their own lack of sense if it tumbles down while they do so.

Correspondence.

Independent Trust for Sale.

Sir,—In reference to the question of the "independent trust for sale" discussed in your issue of the 21st May, 1927, p. 402, a point of practical importance arises as to the stamp on a conveyance to trustees upon trust for sale in the form of the precedent in "Prideaux's Precedents," 22nd Ed., Vol. I, p. 674. An instrument in that form on the face of it contains a conveyance on sale and, it is submitted, a voluntary settlement of land, and is chargeable with duty in respect of each matter. If the stamp has not been adjudicated a purchaser must require that the stamp shall be shown to be sufficient or be adjudicated, as in the case of a transfer of mortgage exceeding £2,000 stamped 10s., or a case like that in *Re Soden and Alexander*, 1918, 2 Ch. 258.

Lincoln's Inn. G. H. PAICE.
25th May.

[The conveyances discussed were those on purchases by trustees for sale bearing *ad valorem* stamp duty at the highest rate, unless in any case the purchase money did not exceed £500 and the deed contained the usual certificate. Are we to understand that our correspondent suggests that, where the highest stamp duty is paid, the stamp must nevertheless be adjudicated?—ED., *Sol. J.*]

House of Lords.

Donald Campbell & Co. *v.* **Pollak.** 5th May.

COSTS—APPEAL—DISCRETION—RULE AS TO RIGHT OF APPEAL ON QUESTION OF COSTS—JUDICATURE ACT, 1873, s. 49—R.S.C., Ord. 65, r. 1.

The rule with regard to the right of appeal to the House of Lords on questions of costs is that, while the House will not review an exercise of discretion as to costs, it will not refuse to entertain an argument that an order as to costs is founded on an error of law.

On the re-hearing of an action before Branson, J., he held that though the defendant P was wholly successful in the action he was not entitled to any costs for the reason that, by his own improper conduct, he had caused it to become the duty of the liquidator to bring the action, and the judge's order was "no order as to costs." P, without the leave of the court, appealed against the order and the Court of Appeal held that the trial judge was not entitled to take into account certain proceedings in another action, and that the judge had no materials before him upon which it was right for him to exercise his discretion as to costs, and declared the defendant entitled to his costs of action. The appellant company now appealed to this House. By s. 49 of the Judicature Act, 1873, which was in force when the appeal to the Court of Appeal was heard, no order made by the High Court or any judge thereof as to costs only which by law were left to the discretion of the court was subject to any appeal except by leave of the court or judge making such order. On the appeal to this House the respondent took the preliminary point that the appeal was as to costs only and could not therefore be entertained according to the rule of the House which went beyond the terms of the statute.

The HOUSE (The Lord Chancellor, Lords Haldane, Dunedin, Sumner, Atkinson, Shaw and Blanesburgh) by a majority, Lords Sumner and Shaw dissenting, disallowed the preliminary objection to the right of appeal. Their lordships were of opinion that there was no rule of the House which prevented a party from asking to have a decision reviewed on the ground that it was wrong in law, even though the only result would be to alter the incidence of costs. The true rule was that, while the House would not review an exercise of discretion as to costs, it would not refuse to entertain an argument that an order as to costs was founded on an error of law. In that House, as in the Court of Appeal, an appeal from a discretionary order as to costs would not be allowed, except perhaps in cases where there was also a *bona fide* appeal on the merits, but when it was alleged that the Court of Appeal, in dealing with costs, had fallen into error on a point of law which affected costs, an appeal on that question would be heard. There were many cases in which an appeal under those conditions had been entertained, and there was no case in which such an appeal had been held to be incompetent. Therefore it was clear that the appeal in this case, in which the exercise by the trial judge of his statutory discretion as to costs had been set aside by the Court of Appeal on legal grounds, ought to be allowed to proceed.

COUNSEL: *Jowitt*, K.C., and *H. J. Astell Burt*; *Bevan*, K.C., *Barrington Ward*, K.C., and *E. J. Spence*.

SOLICITORS: *Bull & Bull*; *Wedlake, Letts & Birds*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

Ryder and Steadman's Contract, *In re.*

No. 1. 23rd May.

SALE OF LAND—SALE IN FEE SIMPLE SUBJECT TO RENT-CHARGE—TRANSITIONAL PROVISIONS OF ACTS OF 1925—STATUTORY TRUSTS—MEANING OF "SETTLED LAND"—LAW OF PROPERTY ACT, 1925, 15 Geo. 5, c. 20, ss. 35, 205; Sched. I, Pt. IV, para. 1, clauses 2 and 3—SETTLED LAND ACT, 1925, 15 Geo. 5, c. 18, ss. 1, 2.

The words "settled land" used in the Law of Property Act, 1925, 1st Sched., Pt. IV, para. 1, clauses 2 and 3, mean settled land prior to the date of the new real property legislation coming into force 1st January, 1926. Therefore, where three persons purported to sell as joint tenants holding upon the statutory trusts land which had been conveyed to them in 1924 subject to a jointure rent-charge, it was held that they could do so, because they were entitled in undivided shares to land "not being settled land" within the meaning of clause 2.

Appeal from a decision of Astbury, J., upon a vendor and purchaser summons (reported 71 SOL. J. 214). In April, 1924, by virtue of several family deeds, freehold estates stood limited to such uses as the Duke of Marlborough and Marquess of Blandford should jointly appoint, but subject to a jointure rent-charge and a term to secure the same. By a conveyance on sale dated 14th April, 1924, the Duke and Marquess appointed land, part of the estates, to three persons in fee simple as tenants in common in equal shares, subject to the jointure, but with an indemnity therefor. By a contract dated 13th February, 1926, the three persons (hereinafter called the vendors) contracted to sell to a purchaser for £1,700, subject to the jointure, but with the benefit of the indemnity, so that the jointure did not in fact affect the price. It was admitted that the land was not settled land before 1st January, 1926, but the purchaser submitted that on that date, owing to the jointure, it became settled land under the Settled Land Act, 1925, s. 1, sub-s. (1), clause v, and therefore settled land within the meaning of the Law of Property Act, Sched. I, Pt. IV, para. 1, clause 3. It therefore vested in the trustees of the compound settlement constituted by the above deeds, or in default in other persons under clause 3 on the statutory trusts for sale, and not in the vendors under clause 2 on the same statutory trusts. On this vesting no doubt s. 1, sub-s. (1), clause v, of the Settled Land Act no longer applied (see clause vii), but it had applied momentarily for the purpose of determining in whom the land was to vest. The vendors contended that the governing factor was clause 2 of para. 1 of Pt. IV, which directs that "If the entirety of the land (not being settled land) is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting undivided shares, but subject or not to incumbrances affecting the entirety, it shall, by virtue of this Act, vest in them as joint tenants upon the statutory trusts." They argued that "not being settled land" meant "not being settled land on 31st December, 1925," and not "not being settled land as the new Acts define the term." Astbury, J., thought that the purchaser's contention was correct; the vendors appealed; their lordships allowed the appeal.

Lord HANWORTH, M.R., said that by s. 39 of the Law of Property Act, 1925, the provisions set out in the 1st Sched. were to have effect "for the purpose of effecting the transition from the law existing prior to the commencement of the Law of Property Act, 1922, to the law enacted by the Act (as amended)." Turning to Pt. IV of the 1st Sched., before 1st January, 1926, the land of the vendors was not settled land, but it was "immediately before the commencement of this Act held at law or in equity in undivided shares vested in possession." The question was whether of the subsequent clauses clause 2 or clause 3 applied. Those opening words of Pt. IV "where immediately before the commencement of this Act" seemed to indicate the time at which the land was to be considered and to be affected by these transitional provisions. It was, so to speak, the dominant time, and at that time the land admittedly was not settled. It was difficult, in view of those words, to say that land was to be considered as coming under the operation of the new Act, and by that operation to be settled land. In his (Lord Hanworth's) judgment, a sufficient meaning could be given to the words "not being settled land" if they were taken as indicating a caution that clause 2 did not deal with settled land. Against that view it was urged that by s. 205 (1) (xxvi) of the Law of Property Act, 1925, the interpretation section, "settled land" was to have the meaning given to it by ss. 1 and 2 of the Settled Land Act, 1925, and so this land was settled land, because it was charged with the jointure, but the effect of s. 205 was limited by the words "unless the context otherwise requires." Further, it was said that s. 35 of the Law of Property Act, 1925, in defining the scope of the statutory trusts, provided for the preservation of the rights of incumbrancers; but here the rights of the jointress were not imperilled, and if that were so it was not necessary to give effect to her rights by withholding the purchase money from the vendors.

SARGENT, L.J., delivered judgment to like effect, and LAWRENCE, L.J., concurred.

COUNSEL: *Farwell*, K.C., and *Walter Banks* for appellants; *Hubert Rose* for respondent.

SOLICITORS: *Stow, Preston & Lyttelton*, for *Andrew Walsh and Bartram*, Oxford; *Steadman, Van Praagh & Gaylor*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Lacteosote Ltd. *v.* Alberman.

Clauson, J. 1st, 2nd, 3rd, 16th March.

TRADE MARK—ACTION FOR INFRINGEMENT—ASSIGNMENT OF TRADE MARK—ASSIGNMENT WITH A PART OF THE BUSINESS—INSEVERABILITY—VALIDITY OF ASSIGNMENT—TRADE MARKS ACT, 1905, 5 Edw. 7, c. 15, s. 22.

Section 22 of the Trade Marks Act, 1905, does not enable a mark distinctive of goods emanating from a foreign factory to be

assigned with the portion of the business of the foreign factory relating only to the vending of the commodity in Great Britain, because such a trade mark would offend the principle of inseverability laid down in Leather Cloth Co. *v.* American Leather Cloth Co., 1865, 11 *H.L.C.* 523, *which is still good law.*

Action and motion. This was an action by the plaintiff for an injunction to restrain the infringing of a trade mark and a motion by the defendant for an order that the mark be expunged from the register. The facts were as follows: Twenty years ago one Famel was manufacturing in France a pharmaceutical preparation known as "Sirop Famel" of the nature of a cure for colds. In 1907 he registered in England in respect of that preparation a trade mark, being a label bearing the words "Sirop Famel" and the initials P.F., the letterpress being in the French language. Since 1907 Famel carried on business in France under a label corresponding in almost every detail with the 1907 mark and imported the preparation into England, where it was sold on his behalf by Wilcox Jozeau & Co. under Famel's 1907 mark. In May, 1923, the plaintiff company, which had only recently been incorporated, was appointed by Famel as his sole wholesale agent for the sale in Great Britain of "Sirop Famel," and on 28th June, 1924, Famel assigned to the plaintiffs the 1907 trade mark and the goodwill of the business done in the goods in respect of which the trade mark was registered, and the company was registered as the proprietors thereof. On 27th April, 1926, the company was also registered under s. 24 of the Trade Marks Act, 1905, as sole proprietors in Great Britain of a second mark "associated" with the 1907 mark. That mark was identical with the 1907 mark except that it was in English and bore the words "Made in France," "Lacteosote Ltd.," "Distributors in Great Britain Wilcox Jozeau & Co. London," which is the trade name used by the plaintiffs. The label further stated that the registration gave no rights to the exclusive use of the word "Famel." The company continued thereafter to procure "Sirop Famel" from Famel in France and to sell it in England, at first under the 1907 mark, and afterwards under the 1926 mark. They never themselves manufactured the article either in England or in France. Since the registration of the 1907 and 1926 marks the defendant had sold in this country "Sirop Famel" not emanating from the plaintiffs but purchased in France ultimately, though not directly from Famel, with the "Famel" label used in France precisely the same as the 1907 label. The infringement alleged was that they sold as "Sirop Famel" a preparation not of the plaintiffs' merchandise in bottles and cartons bearing labels being a colourable imitation of those marks. The defence was that the 1907 mark, as used by the defendant, was never distinctive of the importers, vendors or distributors of the article in the United Kingdom, but denoted that the article was the manufacture of Famel, and that the assignment to the plaintiffs was not of the goodwill attaching to the manufacture with which Famel had never parted, and that accordingly the assignment was invalid as not complying with the provisions of s. 22 of the Trade Marks Act, 1905.

Clauson, J., after stating the facts, and in the course of a considered judgment, said: Unless the defendant succeeds on his motion, he has no defence to the action. The question therefore is whether the marks were properly on the register. It is admitted that if the 1907 mark is liable to be struck off, the 1926 mark, being "associated" with the first mark, must follow the same fate. The 1907 mark is adapted to distinguish Famel's goods without any reference to the importers. The 1926 mark distinguishes Famel's goods, and is not adapted to distinguish goods made by the plaintiffs, but might be adapted to distinguish such only of Famel's goods as passed through the hands of the plaintiffs. Apart from statute, it has been established in *Leather Cloth Co.* v. *American Leather Cloth Co.*, 1865, 11 H.L.C. 523, that a purchaser of a mark becomes the owner of it only if he became at the same time the purchaser of the manufactory or the business concerned in the goods to which the mark had been applied, and the first clause of s. 22 of the Trade Marks Act, 1905, embodied the principle in statutory form: *Pinto* v. *Badman*, 1891, 8 R.P.C. 181 and 192. There is no ground for the suggestion that (save as regards the cases to which the provisions of the second clause of s. 22 and s. 23 of the Act of 1905 apply) the principle of inseverability which existed before the Act of 1875, and was embodied in succeeding acts is in any way different from what it was in 1865 when the *Leather Cloth Co. Case* (*supra*) was decided. According to the strict tenor of the words of the assignment the whole of Famel's business, including the manufacturing portions of the business, was assigned, with the result that the plaintiffs were under it complete successors to his business of producing and vending "Sirop Famel." It is plain from the facts that the parties could not have intended such a result as since the assignment the plaintiffs have had nothing to do with Famel's business in France, and had been merely importers into and sellers in this country. But if, in spite of the intention of the parties, the plaintiffs have legally become the owners of the whole business, it may be that by their conduct they must be treated as having abandoned the French part of the business so assigned to them, with the result that under s. 22 the 1907 mark had determined with the business assigned. And, assuming that the assignment is only effective so far as regards the business of importing the article into Great Britain and selling it there, section 22 does not enable a mark distinctive of goods emanating from Famel's business (composed of manufacturing and vending departments) to be assigned with a portion of the business, viz., that of vending in Great Britain, that portion being separated from the rest of the business. To hold otherwise would be inconsistent with the principle that a trade mark is distinctive of goods with which a particular business is concerned. If the identity of the business is destroyed the mark is destroyed with it. Corroboration of this view of the law is to be found in the judgment of Fry, L.J., in the *Apollinaris Case*, 1891, 2 Ch. 186. The action must be dismissed.

Counsel: *Montagu*, K.C., and *J. H. Evans-Jackson*; *Sir Duncan Kerly*, K.C., and *Kenneth R. Swan*.

Solicitors: *Taylor, Willcocks & Co.*; *C. Butcher and Simon Burns*.

[Reported by L. M. May, Esq., Barrister-at-Law.]

Purnell *v.* Roche and Another.

Romer, J. 23rd and 24th March, 13th April.

Mortgage—Foreclosure Proceedings—Mortgagee of Unsound Mind—Date of Accruer of Right to Bring Action—Real Property Limitation Act, 1837, 7 Will. 4 and 1 Vict. c. 28—Real Property Limitation Act, 1874, 37 & 38 Vict. c. 57, ss 1, 3 and 9.

Section 3 of the Real Property Limitation Act, 1874, *only applies if a mortgagee is of unsound mind, when the right of the mortgagee first accrues or must be deemed to have first accrued, so that where the mortgagee was not of unsound mind at the date fixed for redemption by the indenture of mortgage such section has no application.*

Owen *v.* De Beauvoir, 1847, 16 M. & W. 547, *applied*.

This was an originating summons issued by the mortgagee for the enforcement of a mortgage by foreclosure or sale. The facts were as follows: By an indenture of mortgage dated 27th September, 1902, Roche assured to the plaintiff certain freeholds by way of mortgage for securing payment of a principal sum of £350 and interest as therein mentioned, subject to redemption on 27th March, 1903. Since the date of the mortgage Roche and those claiming under him had remained in undisturbed occupation of the premises. On 23rd February, 1907, the plaintiff became and had ever since

remained of unsound mind, but no receiver of her estate was appointed until 28th January, 1926, when her husband was appointed receiver. On 31st January, 1907, the last payment in respect of interest before the date on which the plaintiff became of unsound mind was made, when the mortgagor paid to the plaintiff's husband, who received the same as her agent, £17 10s. in respect of interest for the year ending 27th September, 1906. On 25th May, 1907, the mortgagor made a payment to the husband on account of interest due on 27th March, 1907, but since that payment no interest had been paid under the mortgage, and there was no evidence of any acknowledgment in writing of the plaintiff's title having been given by the mortgagor since the date of the mortgage. On behalf of the plaintiff it was alleged that having regard to the Real Property Limitation Act, 1837, her right to bring this action for foreclosure, which was an action to recover land within the meaning of the statutes, must be deemed for the purposes of s. 3 of the Real Property Limitation Act, 1874, to have first accrued on 25th May, 1907. The mortgagor had died on 31st August, 1923, and on behalf of the dependants claiming through him it was contended that the plaintiff's right to make her entry or bring her action first accrued at the date of the mortgage or at the latest at the date when the estate of the mortgagee became absolute in law on the 27th March, 1923, the date of redemption.

ROMER, J., after stating the facts, said: I have come to the conclusion that the defendants are right in their contention. If, as I think is the true view, the mortgagee's right in the present case first accrued, or must be deemed to have first accrued at the latest on 27th March, 1903, at which time she was not of unsound mind, she cannot get any assistance from s. 3 of the Act of 1874. That section, according to its terms, only applies if the mortgagee is of unsound mind when the right "first accrued as aforesaid." It follows, I think, from *Owen* v. *De Beauvoir*, 1847, 16 M. & W. 547, that these words are equivalent to "first accrued or must be deemed to have accrued." In the case therefore of an acknowledgment in writing made while the mortgagee was of unsound mind the mortgagee can maintain an action at any time within six years after ceasing to be under disability. Between an acknowledgment in writing and a payment of interest which is also an acknowledgment, though not in writing, there would seem to be but little difference in principle. But I do not see how in the face of the express words of the statute I can hold that a disability beginning after the date when the right first accrued or must be deemed to have first accrued entitles the mortgagee to the protection given by s. 3 of the Act of 1874. The action must be dismissed.

COUNSEL: *Owen Thompson*, K.C., and *Jolly*; *G. O. Slade*; *Earengey*.

SOLICITORS: *Smiles & Co.*, for *Steel & Broom*, Cheltenham; *McKenna & Co.*, for *W. H. Russell*, Cheltenham.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Bednall v. Bednall and Shivussawa.

Hill, J. 23rd and 27th May.

DIVORCE—PETITION FOR DISSOLUTION—CUSTODY OF LEGITIMATED CHILD—LEGITIMACY ACT, 1926 (16 & 17 Geo. 5, c. 60), ss. 1, 6, Sched., para. 1 (*b*), (*c*)—LEGITIMACY DECLARATION ACT, 1858 (21 & 22 Vict. c. 93)—JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), ss. 188, 193.

The Divorce Court will not adjudicate upon the question of legitimation in a suit in the absence as a party of the child to be legitimated.

In this undefended petition for dissolution, the husband petitioner asked for an order giving him the custody of a child legitimated by virtue of the provisions of the Legitimacy Act, 1926. The facts and argument appear from the judgment.

HILL, J., in a considered judgment, said: I have pronounced a decree *nisi* of dissolution of the marriage of the husband and wife. There remains the question whether upon the materials before me, and in the present state of the cause as to the parties, I can make an order for the custody of the child. The petitioner alleged in his petition that "there is no issue of the said marriage, but there is a legitimated child—namely Dorita Cecilia, who was born on 26th May, 1922." The petitioner's prayer asked for "custody of the said legitimated child." The petition was duly served upon the respondent and she entered an appearance. If the child had been issue of the marriage I should have had no hesitation in giving the petitioner custody of her. In the present case, before the Legitimacy Act, 1926, I could have made no order. I have to consider whether, and in what circumstances and upon what proof, I can, since the passing of that Act, make an order in respect of a child claimed to be the legitimated child of the husband and wife whose marriage is the subject of these proceedings. I was asked on behalf of the petitioner to do two things: (1) To make a declaration that the child was legitimated; and (2) to give custody to the petitioner. The petitioner was bound to ask for both, because until the court found that the child was legitimated, it would have no power to grant custody. But when I am asked to make a declaration that the child was legitimated, I must remember that the husband and wife are not the only persons interested in the question whether the child is one to whom the Act applies. The child is interested, but she is not at present a party to the suit. In her absence, I do not think that I ought to adjudicate upon the question. I have, it is true, evidence of the husband, who says that the child was born illegitimate; that he was the father; that the mother always treated him as such; that he married the mother two months after the birth of the child; that at the date of the birth neither he nor the mother was married to a third person; and that he was at the date of the marriage domiciled in England. This evidence, if acted upon, would show that all the conditions of s. 1 of the Act were fulfilled, and the effect of the Act would be that the child was legitimated as from 1st January, 1927. But I repeat that I do not think that I ought to act upon that evidence in a proceeding to which the child is not a party. The Act, by the Sched., para. 1 (*b*) and (*c*), contemplates that paternity may be established by a court of competent jurisdiction, or by a court making an affiliation order, or by a court which makes a declaration of legitimacy under the Legitimacy Declaration Act, 1858, as amended by the Act of 1926. Parliament seems to have overlooked the fact that the Legitimacy Declaration Act, 1858, has been, as to nearly all of it, repealed by the Judicature (Consolidation) Act, 1925, which substitutes for it s. 188 of that Act. Unless the child is a party I do not think that this court is a "court of competent jurisdiction." Reference was made to s. 6 of the Legitimacy Act. I do not think that that has any application to custody. If the child is once found to be legitimated, the powers of the court under s. 193 of the Judicature (Consolidation) Act, 1925, as to custody, extend to her; for she is a child the marriage of whose parents is the subject of the proceedings. It is for the petitioner and his advisers to consider the possibility of any further proceeding in which the child would be a party to the suit.

COUNSEL: *H. B. Durley Grazebrook* for the petitioners.

SOLICITORS: *Hewitt, Woollacott & Chown.*

[Reported by J. F. COMPTON MILLER, Esq., Barrister-at-Law.]

Societies.

Law Association.

ANNUAL GENERAL COURT.

The 110th Annual General Court of this Association was held at The Law Society's Hall on Tuesday, Mr. W. M. Woodhouse (Treasurer) occupying the chair. In moving the adoption of the report, which was agreed to unanimously, he said that the total accounts were £2,466 10s. 2d. and that the relief granted during the year had amounted to £2,146, as compared with £1,973 in 1925. This had been distributed as follows: £835 amongst eleven members' cases and £1,311 amongst forty-three non-members' cases. To a considerable extent the increase was the result of a resolution of the last annual meeting raising the grant in non-members' cases from £35 to £52. Originally the grant was £15 annually; then it was increased to £25, later to £35, and last year there had been a big jump to £52. The increase, he said, had been very much appreciated by those who had been compelled to come to the Association for assistance, in proof of which he read extracts from some of the letters which had been received from those who had benefited. A lady, a grand-niece of a former member and chairman of the board, who, owing to the war and to an unwise selection of investments, had lost everything, wrote that but for the bounty of the Association she did not know what would have become of her and of those who were dependent upon her. Another letter expressing gratitude was from a solicitor who had had a quite distinguished University career but had not succeeded in getting clients and had gradually come down in the world. That was the sort of letters which were constantly being received. If such letters could only be published he did not doubt but that the membership of the Association would be considerably increased. Such facts could only be made known by personal canvass, when probably many of those members of the profession who had not joined the Association would do so. A gratifying feature was that the membership, after allowing for deaths, had risen from 710 to 747, and it should be borne in mind that the mortality was somewhat heavy, as many of the members were getting on in years. It was most desirable to enlarge the membership, in order that it might be possible to increase the grants, for, in view of the present heavy cost of living, a grant which used to be sufficient was now wholly inadequate.

Lord Blanesburgh was re-elected president and the committee and officers were also re-elected.

The Union Society of London.

The Union Society met on Wednesday evening in the Middle Temple Common Room. The motion for discussion was "That this House deplores the action taken by His Majesty's Government in regard to the U.S.S.R." Mr. D. F. Brundret (barrister) in opening, read extracts from the published documents found in the Arcos raid. These were, he said, quite innocuous, as were those obtained by the Foreign Secretary. The action of the Government would make Russia an implacable enemy, and also would spoil our trade with Russia, which in six years had amounted to one hundred millions. Mr. J. G. Baker (barrister) opposed on the grounds that the Russians were continually subversive to this country. Mr. K. Ingram (barrister), Mr. Salter Nichols (barrister), Mr. A. Sandilands (barrister), Mr. L. A. Freeman and Mr. Alma Prasada supported the opener. Mr. D. F. Ryan (barrister), Mr. R. S. Thorne (barrister), Mr. S. M. Symmons (barrister), supported the opposer. The opener having replied the motion was declared carried by seven votes to six.

Chester and North Wales Incorporated Law Society.

The forty-sixth annual meeting of this society was held at the Town Hall, Chester, on Wednesday, the 25th ult., the retiring president, Mr. W. Clarke Deakin (Northwich), in the chair. It was reported that the society now numbered 185 members.

The society's intermediate prize for 1926 was presented to Mr. John Kenneth Dickin Roberts, who is serving his articles with Mr. J. Eustace Jones, of the firm of Messrs. Walker, Smith & Way (Chester), and who passed in the first class at the Intermediate Examination of The Law Society in March, 1926.

The following officers were elected for the ensuing year: President, Mr. T. Moore Dutton (Chester); Vice-president, Mr. J. J. Marks (Llandudno); Hon. Secretary, Mr. Henry G. Hope (Chester); Hon. Treasurer, Mr. T. Moore Dutton (Chester); Hon. Auditors, Mr. W. H. Barnes and Mr. David Hughes (both of Chester). The following, with the officers named, will constitute the committee for the same period: Messrs. J. P. Gamon (Chester), A. E. Whittingham (Nantwich), J. H. Bate (Wrexham), R. J. Kendrick (Wrexham), H. P. Rigby (Middlewich), F. Turner (Chester), R. Guthrie Jones (Dolgelley), W. C. Deakin (Northwich), J. Eustace Jones (Chester), and Cyril O. Jones (Wrexham).

The annual dinner was held in the evening at the Grosvenor Hotel under the presidency of Mr. T. Moore Dutton, when his Honour Judge R. O. Roberts and Dr. Sprent (President of the Chester and North Wales Medical Association) were the guests of the society.

Eighth International Congress of Actuaries.

At the forthcoming congress, which opens in London on the 25th June, no less than ninety-nine members from seventeen separate countries have contributed papers for submission. The contributions are being printed in full in one of the three languages, English, French or German, and summaries of each paper are given in the other two languages. A paper originally written in one of these three languages will appear in full in the one in which it is written.

Property Mart.

Messrs. Douglas Young & Co., of London, in conjunction with Messrs. Wm. Fox & Sons, of Bournemouth, offered for sale the Northbrook Farm Estate, Micheldever, Hants, at Winchester on Tuesday. A good company was present, and after spirited bidding, Lot 6, Northbrook Farm, with 352 acres was knocked down at £6,500; Lot 7, Northbrook Dairy Farm, with 260 acres, realised £6,200; Lot 8, a cottage, with possession, £240; Lot 9, a modern semi-detached cottage, £325; and Lot 10, a similar cottage, £315. Lots 1 to 5, 12, 12A and 13, comprising Western House, with 252 acres of fertile arable land, commodious buildings and three cottages, the whole with vacant possession, was withdrawn at the price of £4,500; Lot 11, a piece of allotment ground, suitable for a building site, was withdrawn at £100. These can be treated for privately. The vendor's solicitors are Messrs. Shenton, Pain & Brown, of Winchester.

Rules and Orders.

SUPREME COURT, ENGLAND.

FUNDS.

THE SUPREME COURT FUNDS PROVISIONAL RULES, 1927. DATED MARCH 14, 1927.

I, the Right Honourable George Viscount Cave, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury, and in pursuance of the powers contained in section 146 of the Supreme Court of Judicature (Consolidation) Act, 1925 (*), and of every other power enabling me in this behalf, propose to make the following Rules:—

1. In Rule 74 of the Supreme Court Funds Rules, 1915,(†) at the end of paragraph (*g*) after the words "placed on deposit," there shall be inserted the following paragraph which shall stand as paragraph (*h*):—

"(*h*) When a fund has been transferred to one of the accounts of unclaimed balances referred to in Rule 99."

2. These Rules may be cited as the Supreme Court Funds Provisional Rules, 1927, and the Supreme Court Funds Rules, 1915, as amended by any subsequent Rules, including the Supreme Court Funds (No. 2) Provisional Rules, 1926, shall have effect as further amended by these Rules.

And I, the said George Viscount Cave, Lord High Chancellor of Great Britain, with the same concurrence as aforesaid, hereby certify that on account of urgency these Rules should come into operation forthwith, and hereby make the said Rules to come into operation forthwith as Provisional Rules.

Dated the 14th day of March, 1927.

Cave, C.

Stanley
David Margesson } Lords Commissioners of His Majesty's Treasury.

(*) 15 and 16 G. 5, c. 49. (†) S.R. & O. 1915, No. 1020.

THE COUNTY COURT FEES (AMENDMENT) ORDER, 1927.
DATED APRIL 20, 1927.

The Lord Chancellor and the Treasury, in pursuance of the powers and authorities vested in him and them respectively by section 165 of the County Courts Act, 1888,(*) as amended by the County Courts Act, 1924,(†) section 2 of the Public Offices Fees Act, 1879,(‡) and sections 237 and 238 of the Companies (Consolidation) Act, 1908,(§) do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require him and them, make, concur in, and sanction the following Order :—

1. The following paragraph shall be inserted in the County Court Fees Order, 1925,(¶) after paragraph 3 and shall stand as paragraph 3A :—

"3A. The Interpretation Act, 1889,(‖) shall apply to this Order in like manner as it applies to an Act of Parliament."

2. Fees No. 2, No. 3 and No. 20 in the Table of Fees contained in the Schedule to the County Court Fees Order, 1925, shall be annulled, and the following Fees shall be substituted therefor :—

"No. of Fee.	Description of Proceeding.	Amount of Fee.
2	On filing a petition—	
	(i) for payment of a sum of money	Fee No. 1 (i).
	This fee is not payable in addition to Fee No. 2 (iv).	
	(ii) for the appointment or removal of a trustee or for an order under the Guardianship of Infants Acts, 1886 and 1925, or an adoption order or a legitimacy declaration	10*s.*
	(iii) for winding up a company	£1 10*s.*
	(iv) under Order 38, Rule 23, for an order relating to the capital of a fund in court	Fee No. 1 (i), calculated on the value of the fund.
	(v) in every other case ..	£2.
3	On an application commencing proceedings	5*s.*
	This fee is not payable where special provision as to the fee is made in another section.	
20	On hearing a petition—	
	(i) for payment of a sum of money	Fee No. 13, or where the petition is unopposed, one half of that amount.
	This fee is not payable in addition to Fee No. 20 (iv).	
	(ii) for the appointment or removal of a trustee or for an order under the Guardianship of Infants Acts, 1886 and 1925, or an adoption order or a legitimacy declaration	10*s.*
	(iii) for winding up a company	£1 10*s.*
	(iv) under Order 38, Rule 23, for an order relating to the capital of a fund in court	Fee No. 2 (iv) or where the petition is unopposed, one half of that amount.
	(v) in every other case ..	£2, or where the petition is unopposed £1."

3. This Order may be cited as the County Court Fees (Amendment) Order, 1927, and shall come into operation on the 20th day of April, 1927, and the County Court Fees Order, 1925, as amended by the County Court Fees (Amendment) Order, 1926,(**) shall have effect as further amended by this Order.

Dated the 20th day of April, 1927.

Cave, C.
Stanley } Lords Commissioners
David Margesson } of H.M. Treasury.

(*) 51–2 V. c. 43. (†) 14–5 G. 5. c. 17. (‡) 42–3 V. c. 58.
(§) 8 E. 7. c. 69. (¶) S.R. & O. 1925 (No. 1234), p. 188. (‖) 52–3 V. c. 63.
(**) S.R. & O. 1926 (No. 1026), p. 354.

Legal Notes and News.

Honours and Appointments.

His Honour Judge PARRY has resigned his office as a Judge of County Courts. The Lord Chancellor has appointed Mr. CHARLES EDWARD DYER, K.C., LL.M., to be a Judge of County Courts, and has made the following arrangements upon the vacancy caused by the resignation of Judge Parry : His Honour Judge DOBB to be the Judge of the County Courts on Circuit 48 (Lambeth, etc.) ; His Honour Judge DYER to be the Judge of Birmingham County Court ; and His Honour Judge RUEGG to sit as an additional Judge at Birmingham County Court in addition to the Courts on Circuit 26 of which he is now the Judge. His Honour Judge Dyer was called to the Bar in 1890, and took silk in 1919.

Professional Announcement.

(2s. per line.)

Messrs. Carter & Barber, solicitors, 32, Finsbury-square, E.C.2, who have for some time carried on practice at that address, announce that they are moving into more commodious offices at No. 3, Clement's-inn, Strand, on Saturday, 4th June. From that date the telephone numbers will change to Chancery 7295 and 7296.

Wills and Bequests.

Mr. James Nicholson Clarkson (76), of Riddlesden Hall, Keighley, Yorks, senior partner in the firm of Messrs. Spencer, Clarkson & Co., Solicitors (net personalty £8,042), £19,411.

Mr. Walter Richard John Hickman, solicitor, Chobham, Surrey, late of Ironmonger-lane, E.C., left estate of the gross value of £95,345.

THE APPOINTMENT OF MAGISTRATES.

The appointment of licensed victuallers to the magisterial bench was considered at the conference of the Licensed Victuallers' Defence League at Margate.

The parliamentary agent and manager of the League, Mr. H. G. Robinson, said that he wrote to the Lord Chancellor saying that the League was of opinion that the rejection of nominations of licence holders for the Bench cast a serious reflection on the status and integrity of respected citizens. The Lord Chancellor asked that points should be put before him in writing, and he (Mr. Robinson) wrote on behalf of the Council of the League pointing out that the non-appointment of licensed victuallers as Justices of the Peace had no legal justification ; that licensed victuallers who had acted as Chief Magistrates for a limited period were deliberately rejected when nominated for permanent occupancy of the Bench ; that representative licensees had all the qualifications mentioned in the report of the Royal Commission on the selection of Justices of the Peace ; and that that Commission recommended that it was in the public interest that "persons of every social grade should be appointed Justices of the Peace."

A letter was received from the Lord Chancellor saying that there was no statutory rule against the appointment of a licensed victualler to the Bench, and that if few such appointments were made, the reason probably was that magistrates who were licence-holders were peculiarly liable to be placed in a position of difficulty when hearing cases arising on licensed premises. At the same time, the number of such appointments was within the discretion of the Lord Chancellor, who was always willing to consider on its merits, and with due regard to the public interest, the name of a licensed victualler who might be recommended by an Advisory Committee for appointment. The letter added that licensed victuallers were not the only class of persons who appeared to suffer under a disadvantage for which there was no statutory authority. Clergymen of the Church of England who were in possession of a benefice and ministers of other denominations who were in charge of a church were only appointed to the Bench in most exceptional circumstances.

THE PASSING OF "THE CERTIFICATED CONVEYANCER."

In the current Law List there appears only one entry referring to a certificated conveyancer. It is that of Mr. Samuel Whitty Chandler, B.A., who has died at Boscombe, Bournemouth, aged seventy-five years. He was a conveyancer of the Middle Temple, and qualified in 1875. Born at Sherborne, Dorset, he was educated at Taunton and London University. For the past thirty-two years he had practised at Boscombe and Bournemouth. For two years he had been president of the Bournemouth Free Church Council.

NATIONAL PLAYING FIELDS.

DUKE OF YORK'S APPEAL TO THE NATION.

H.R.H. the Duke of York, President of the National Playing Fields Association, issues the following appeal to the nation:

"The careful inquiries that have been made in different parts of Great Britain by the National Playing Fields Association and its county branches reveal a deplorable shortage of playing fields for the young people of the country.

"The dearth of facilities for the playing of team games is especially severe, and as our cities and towns expand, absorbing open spaces, the shortage must become even more acute and harder to remedy.

"The provision of public playing fields on a scale sufficient to meet the needs of the nation is, in the opinion of our Association, one of the most pressing problems of the day. For want of such provision, growing boys and girls in ever-increasing numbers are being deprived of their chance to take part in our health-giving national games, and are forced to watch others play.

"I feel confident that everyone must be in entire sympathy with the Association's appeal, and as the President of the Association, I would ask all, no matter how small their help may be, to assist to their utmost ability a movement which is so essential to the well-being and happiness of the nation.

"(Signed) ALBERT."

INNER TEMPLE MOOT.

APPEAL ARGUED BEFORE Mr. Justice SANKEY.

A Moot was held after dinner on Monday, the 2nd ult., at the Inner Temple, before Mr. Justice Sankey, The following appeal was argued:—

Owen Jones and Thomas Williams are each the owner in possession of a farm situate on the slope of Caer Sindwyll, a steep hill in a district which is occasionally subject to sudden landslides. The lower farm of Williams is an ordinary meadow and pasture farm. The upper farm belongs to Owen Jones, and along the boundary between his and the lower farm of Williams runs a fence. Within this fence Jones has a good orchard, and close against the fence has built a new up-to-date cowshed. A sudden landslide happens and the fence, the ground, the fruit trees, and the cowshed move six or seven feet on to what was Williams's pasture land. The fence is unbroken—the fruit trees are undamaged, but the cowshed is badly shaken and cracked. The neighbours then fall out. Williams claims that the old boundary is still the boundary and that the fence and the fruit trees are his, but he is willing to let Jones pull down the materials of the cowshed and remove them. Jones, on the other hand, claims that the fence in the new position is now the boundary between the farms. He persists in his claim, and Williams then brings an action for a declaration that the old line of the fence is the boundary of the two farms and for an injunction to restrain Jones from trespassing on to his land. Jones counter-claims for a declaration that the new line of the fence and cowshed is the boundary line of the two farms, and claims an injunction to restrain Williams from trespassing on to any part of the land that now lies above the fence.

The court below having given judgment in favour of Williams, Jones appeals.

Mr. C. H. Pearson (barrister) and Mr. R. Manningham-Buller (student) were for the appellant; and Mr. C. P. Harvey (barrister) and Mr. A. F. Maurice Berkeley (student) were for the respondent.

Judgment was given in favour of the respondent and the appeal was dismissed. The judge held, on the authority of *Bluett* v. *Tregollen*, that there was an "adhæsion" of the land that slipped on the lower land, and that consequently the soil that slipped became part of the land of the lower landowner. Therefore, the judge below was right in making the declarations he had made. The boundary, therefore, was on the original line of the fence.

The following Masters of the Bench were present:—Mr. Justice Rowlatt, Mr. A. M. Langdon, K.C., Mr. F. P. Schiller, K.C., Mr. Justice Fraser, and Mr. Justice Bateson.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement, Thursday, 16th June, 1927.

	Middle Price 1st June	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	86½	4 13 0	—
Consols 2½%	54⅞	4 11 0	—
War Loan 5% 1929-47	100½	4 19 6	4 19 6
War Loan 4½% 1925-45	95¼	4 14 0	4 17 0
War Loan 4% (Tax free) 1929-42	100⅜	3 19 6	3 19 6
Funding 4% Loan 1960-90	86⅞	4 12 0	4 12 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	92$^{9}/_{16}$	4 6 6	4 9 6
Conversion 4½% Loan 1940-44	96¼xd	4 13 6	4 16 6
Conversion 3½% Loan 1961	76½	4 11 6	—
Local Loans 3% Stock 1921 or after	64$^{9}/_{16}$	4 13 6	—
Bank Stock	246	4 18 0	—
India 4½% 1950-55	90⅝	4 19 6	5 2 6
India 3½%	70	5 0 0	—
India 3%	60	5 0 0	—
Sudan 4½% 1939-73	94	4 16 0	4 17 0
Sudan 4% 1974	84½	4 15 0	4 18 6
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years)	80¼	3 14 0	4 12 0
Colonial Securities.			
Canada 3% 1938	84⅜	3 11 0	4 17 6
Cape of Good Hope 4% 1916-36	92⅝	4 6 6	5 0 0
Cape of Good Hope 3½% 1929-49	80¼	4 7 0	5 0 6
Commonwealth of Australia 5% 1945-75	97¾xd	5 2 0	5 2 0
Gold Coast 4½% 1956	95½	4 14 6	4 17 6
Jamaica 4½% 1941-71	92	4 18 0	4 19 0
Natal 4% 1937	92½	4 6 6	4 19 6
New South Wales 4½% 1935-45	90½	4 19 6	5 8 6
New South Wales 5% 1945-65	96¾	5 3 0	5 4 6
New Zealand 4½% 1945	95½	4 14 6	4 18 6
New Zealand 5% 1946	101¾	4 18 0	4 18 6
Queensland 5% 1940-60	96¾	5 3 6	5 4 6
South Africa 5% 1945-75	102	4 18 0	4 19 6
S. Australia 5% 1945-75	96½xd	5 3 6	5 3 6
Tasmania 5% 1945-75	100½	4 19 6	5 1 0
Victoria 5% 1945-75	100	5 0 0	5 2 0
W. Australia 5% 1945-75	99	5 1 0	5 3 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62¾	4 16 0	—
Birmingham 5% 1946-56	102¾	4 17 6	4 18 6
Cardiff 5% 1945-65	101½	4 19 0	4 19 0
Croydon 3% 1940-60	69	4 7 6	5 0 0
Hull 3½% 1925-55	78	4 10 0	5 0 0
Liverpool 3½% on or after 1942 at option of Corpn.	73½	4 15 6	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52½	4 16 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62½	4 16 0	—
Manchester 3% on or after 1941	63½	4 14 6	—
Metropolitan Water Board 3% 'A' 1963-2003	63	4 15 0	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	64¾	4 12 6	4 15 0
Middlesex C. C. 3½% 1927-47	82½	4 5 6	4 17 6
Newcastle 3½% irredeemable	71½	4 18 6	—
Nottingham 3% irredeemable	61½	4 17 0	—
Stockton 5% 1946-66	101½	4 18 6	4 19 6
Wolverhampton 5% 1946-56	101½	4 19 0	4 19 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	80¾	4 19 0	—
Gt. Western Rly. 5% Rent Charge	99	5 1 0	—
Gt. Western Rly. 5% Preference	93½	5 6 6	—
L. North Eastern Rly. 4% Debenture	76	5 6 0	—
L. North Eastern Rly. 4% Guaranteed	71½	5 11 0	—
L. North Eastern Rly. 4% 1st Preference	65½	6 1 6	—
L. Mid. & Scot. Rly. 4% Debenture	79½	5 0 6	—
L. Mid. & Scot. Rly. 4% Guaranteed	76½	5 4 6	—
L. Mid. & Scot. Rly. 4% Preference	71½	5 12 0	—
Southern Railway 4% Debenture	79½	5 0 6	—
Southern Railway 5% Guaranteed	97½	5 2 6	—
Southern Railway 5% Preference	91½	5 9 6	—